

**SUPPLEMENTAL
SUPPORTING DOCUMENT No. 5**

**Comment Letters Received During the Public
Comment Period for
Tentative Order No. R9-2004-001**

A document presented to the Regional Board on June 10, 2004.

- a. City of Temecula, January 27, 2004
- b. Construction Industry Coalition on Water Quality, January 28, 2004
- c. Riverside County Flood Control and Water Conservation District, January 28, 2004
- d. Richards/Watson/Gershon, February 5, 2004
- e. State Water Resources Control Board, February 9, 2004
- f. Richards/Watson/Gershon, February 10, 2004
- g. Murrieta County Water District, February 19, 2004
- h. Eastern Municipal Water District, March 3, 2004
- i. San Diego Bay Council, March 4, 2004
- j. U.S. Environmental Protection Agency, March 5, 2004
- k. Richards/Watson/Gershon, March 10, 2004
- l. Riverside County Flood Control and Water Conservation District (verbal comments from March 10 Board Meeting)
- m. Riverside County Flood Control and Water Conservation District, March 10, 2004



City of Temecula

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GR 1-30-04
Ed Harris
provide to LC Member
for 11 Feb hearing

Michael S. Naggar
Mayor

Jeff Commerchero
Mayor Pro-Tem

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January 27, 2004

Mr. John H. Robertus, Executive Officer
California Regional Water Quality Control Board — San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA., 92123-4340

Dear Mr. Robertus,

The City of Temecula (City) is a co-permittee on the Santa Margarita River (SMR) watershed Municipal Separate Storm Sewer (MS4) permit. The City has initiated a review of Tentative Order No. R9-2004-001, and the Fact Sheet. The Fact Sheet, containing 72 pages of information not previously released, and the new and expanded requirements proposed in the Tentative Order, including items not previously discussed with City staff, are extensive. Furthermore, the corresponding compliance programs and resources needed to implement these requirements are significant.

Due to the holidays and the deadline for filing agenda items for consideration by the City Council, staff effectively had nine working days to review the Tentative Order since receiving it on December 15. Therefore, the City is only able to submit initial comments on the proposed compliance requirements and the potential budgetary and operational impact of these requirements at this time. Additional comments may be included at a later date.

While the City shares the Regional Board's goal of water quality protection, the City must prioritize and balance finite public resources to provide numerous vital public facilities and services. In addition to police and fire services, the City is responsible for installation and maintenance of infrastructure (roads, drainage facilities, etc.) and other public facilities (parks, libraries, community centers, etc.) and for providing recreational programs, affordable housing, habitat conservation, etc. Although all of these needs are important, municipal finances do not permit any one of them to be funded without consideration to competing needs and priorities. All proposed programs and expenditures must be justified in terms of need and effectiveness.

In reviewing the Tentative Order, there is no equitable exchange between significant expenditures associated with the Tentative Order and need. To date, the Regional Board has not provided substantial evidence of significant environmental imbalances within the SMR watershed sufficient to warrant support of the new and expanded compliance requirements outlined in the Tentative Order. Based on the City's initial review of these requirements, implementation of the proposed new and expanded requirements will exceed our available resources and will significantly impact the City's other public facilities and services. These impacts will be exacerbated by the

proposed State budget that will further reduce funding available to the City. Other potential sources of funding, including fees, surcharges, establishment of a utility, have been evaluated and it has determined that none are realistically available to the City.

The City also has fundamental concerns about the way in which the tentative Order proposes to manage urban runoff quality as an element of the overall water quality management program. Among these concerns is the prescriptive nature of the Tentative Order, which mandates implementation of a number of programs, none of which address an identified water quality problem associated with urban runoff in the Santa Margarita Region or promise to provide a significant water quality benefit beyond that provided by the program proposed by the SMR Permittees. Further, these programs are mandated without an economic analysis. References to compliance costs throughout San Diego and Orange County do not constitute an economic analysis. Even if not required, an economic analysis should be expected as prudent and responsible public policy.

The City is particularly concerned with the compliance schedules proposed by the Tentative Order. These schedules fail to recognize municipal budgetary processes, logistical needs for program implementation, State procedural requirements for ordinance adoption, and other practical considerations that will be faced in implementing new programs. Nothing is provided to justify why a 365-day compliance schedule (180-day schedule for the grading ordinance) is appropriate and necessary, or why any other schedule is not.

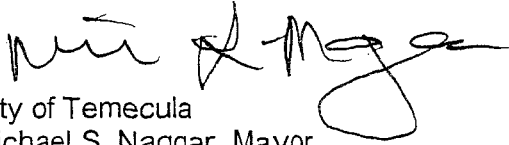
The City is currently implementing various programs outlined in the existing MS4 permit in addition to recommendations requested by Regional Board staff. Regional Board staff have recognized that the City's current construction inspection program has been effective in controlling and eliminating erosion and sediment discharge from all sites throughout the City. As previously discussed with Regional Board staff, the Tentative Order proposes modifications that will compromise the program's effectiveness in protecting water quality. The Tentative Order sets inspection frequencies to prioritized sites without consideration of potential impacts on receiving water quality. The City requests more flexibility in prioritizing construction inspection needs without a "one-size-fits-all" list of sites and schedules dictated by the Board.

Another effective program is the Compliance Assistance Program (CAP) that covers inspections throughout the commercial and industrial sectors. This program is a carry-over from the existing Santa Ana River watershed MS4 program and has been very effective in Temecula. The Tentative Order outlines an expanded commercial/industrial inspection program. However, there are no water quality problems in the Santa Margarita region associated with the additional facilities sufficient to warrant the expanded requirements. Further, the proposed expansion of this inspection program would not provide meaningful receiving water quality benefits. The City believes the existing program adequately protects receiving water quality and should not be modified.

The City is submitting these initial comments in the interest of developing a MS4 permit that can be implemented within available resources and is responsive to the needs of the Santa Margarita region by the Permittees. In the interest of full consideration and comment on the Tentative Order, the City requests an additional thirty days for review prior to the public hearing. The City is committed to water quality protection in a manner that balances this objective with the resources, needs and expectations of the community. We look forward to discussing these concerns with you in order to effectively implement a workable permit.

Please contact Aldo Licitra, Associate Engineer/NPDES, at 909-694-6411 if you have any questions regarding this information. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Naggar", with a large, stylized loop at the end.

City of Temecula
Michael S. Naggar, Mayor

Attachment: Initial Comments

Cc: Shawn Nelson, City Manager
Jim O'Grady, Assistant City Manager
Bill Hughes, Director of Public Works

**City of Temecula
Initial Comments
Tentative Order No. R9-2004-001
NPDES No. CAS0108766**

The City of Temecula has reviewed the Tentative Order and Fact Sheet and submits the following initial comments pertaining to the requirements and implementation of the Tentative Order. First, we have addressed concerns we have on a program level, and then we have outlined our specific concerns pertinent to specific sections within the Tentative Order.

PROGRAM-LEVEL CONCERNS

1. Urban runoff constitutes a minor component of the flows and loading to Murrieta and Temecula Creeks

Based on our knowledge of the water resources in the permitted area, urban runoff is only a minor contributor to the water quality concerns in the Santa Margarita River (SMR) region presented in the Fact Sheet. Virtually all of the flows in Murrieta and Temecula Creek consist of seasonal rising groundwater and groundwater-well discharges by local water districts. In addition, almost one-third of the Santa Margarita Watershed is comprised of non-urban (rural residential, agriculture, State lands, Federal lands, Tribal lands) land uses¹. For the average annual rain event, it is estimated that 89% of the volume of runoff in the SMR region is due to non-urban land uses not regulated under the federal storm water program. For the 100-year, 24-hour rain event, 93% of the volume of runoff will be due to non-urban land uses. As such, the Tentative Order's approach of blanketing the Riverside County SMR region with effectively the same permit conditions as with the more intensely developed coastal urban areas within San Diego and Orange Counties is not justified.

2. The Tentative Order inappropriately requires the City to assume the Regional Board's enforcement responsibilities

The City is required to review, revise, and adopt ordinances, set a penalty structure, and impose fines in order to enforce the components of the Tentative Order. Although the Regional Board believes that the local jurisdictions have greater access and authority to implement these requirements, the City cannot assume enforcement responsibilities of another agency. The California Water Code expressly designates the State Board (and hence Regional Boards) as the state water pollution control agency for all purposes stated in the Federal Water Pollution Control Act. Therefore, enforcement resulting from violations of the Act is the responsibility of the Regional Board and delegation of this authority is not authorized.

3. The Tentative Order inappropriately requires the City to inspect sites less than 1 acre in size

The Phase II regulations state "The Phase II Final Rule requires an operator of a regulated small MS4 to develop, implement, and enforce a program to reduce pollutants in storm water runoff to their MS4 from construction activities that result in a land disturbance of greater than or equal to one acre."² The tentative Order expands this beyond the requirements of the federal NPDES program by requiring the City to inspect facilities smaller than one acre on an as-needed basis. This is effectively an unfunded state mandate and should be removed from the Tentative Order.

¹ County of Riverside Assessor, 2002.

² Storm Water Phase II Compliance Assistance Guide. Washington D.C. EPA 833-R-00-002

4. The Aggressive Compliance Schedule Proposed in the Tentative Order Is Overly Burdensome to the City

The tentative Order proposes requiring the City to implement new and expanded compliance programs. As written, the Tentative Order's program implementation requires four steps:

- 1) Review existing programs
- 2) Revise or develop programs for areas found deficient
- 3) Revise ordinances to require the implementation and enforcement of the additional and expanded compliance programs and ensure that violations of the ordinances are enforced by sanctions.
- 4) Have the City Attorney certify that the City has the authority to implement and enforce the compliance requirements.

In addition, the new and expanded compliance programs must be developed, implemented and codified within 365 days of adoption, while Grading ordinances must be revised within 180 days. Further, the Tentative Order requires the City Attorney to certify that the ordinances include provisions for sanctions to enforce compliance programs mandated by the Tentative Order within 365 days of adoption.

Regional Board staff have indicated in the Fact Sheet (Page 32) that the implementation schedule is based on the successful implementation of similar Orders in other regions within 365 days. Regional Board staff have also indicated that the implementation of prescribed programs will not have a significant impact on City resources. The City has initiated a review of its administrative, technical and fiscal resources, and existing compliance programs. Our review indicates that the City cannot reasonably implement this program within the prescribed timeframe without affecting other resources allocated for basic public services (i.e. fire, police, etc.).

The City believes that the accelerated compliance schedule proposed in the Tentative Order is inappropriate. The compliance schedule for program development and implementation proposed in the Tentative Order appears arbitrary and does not recognize the practical and procedural logistics faced by municipalities. Our schedule is based on substantial efforts to determine realistic goals that will achieve successful programs. The compliance schedule proposed in the Tentative Order is based on timeframes dictated to other local governments rather than being based on specific watershed characteristics and impairments or potential threats to water quality conditions in the Santa Margarita region. According to the Regional Board staff's responses to comments during Orange County's municipal storm water permit adoption process, "The co-permittees are provided 365 days to develop the model SUSMP and an additional 180 days for the local SUSMP. One and a half years should be sufficient to develop the necessary ordinances." There is no justification for providing the Riverside County SMR watershed permittees less than the 18 months deemed sufficient for Orange County permittees. However, upon further review of our current resources and future needs, the City believes that this schedule is still too aggressive and requests 21 months for effective compliance.

Regional Board staff has made an inference to using documents from other regions. However, many permittee-specific elements preclude the simplistic approach of "cutting-and-pasting." In fact, a "one-size-fits-all" approach alluded to by Regional Board staff for developing a Model SUSMP and then a local SUSMP does not recognize watershed characteristics. The City believes that the approach of blanketing the Riverside County SMR area with effectively the same permit conditions as with the more intensely developed coastal urban areas within Orange and San Diego Counties will not be effective. The Tentative Order does not consider the differences between regions with varying public comment periods,

City Council reviews, Planning Commission reviews, Committee reviews, legal counsel reviews, and other factors.

5. The Tentative Order does not contain a cost-versus-benefit analysis

Under federal and state law, the Regional Board must consider the costs and the benefits associated with the Tentative Order and not leave this assignment to the City as the requirements are in effect and unavoidable non-compliance is inevitable. Even if not mandated, it is poor public administration to NOT consider economic factors in establishing requirements that will require expenditures of significant public resources for any purpose, including urban runoff management. Nothing in the Tentative Order indicates that such an analysis has been performed. The City is concerned that a state agency is not considering the costs associated with the new and expanded compliance requirements, especially given the fiscal emergency faced by the budget crises faced by California.

6. The Tentative Order does not consider funding mechanisms for municipalities

Currently, the Regional Board receives a funding source from NPDES fees associated with municipalities, developers, business owners, etc. These fees should cover the costs associated with the Board's compliance enforcement activities including inspections. However, the Regional Board cannot effectively conduct enforcement activities at all permitted sites due to limited resources. As a result, the Tentative Order requires permittees to conduct detailed field inspections at all sites that have been issued NPDES permits but without any equitable distribution of the fees or consideration to other's limited resources.

7. The Tentative Order does not include a Safe Harbor Provision

Neither the discharge prohibitions nor the receiving water limitations contains a Safe Harbor Provision stating that, as long as the City complies with the tentative Order, it cannot be sued just because the programs aren't immediately successful. This provision is crucial to protect the City from becoming liable to third parties once it has implemented the program mandated by the Order. Without this provision, the City will be exposed to unwarranted threats of third-party lawsuits, even when the City is making a good-faith effort in trying to meet the obligations under the Tentative Order.

CONCERNS PERTAINING TO SPECIFIC SECTIONS OF THE ORDER

Section II. D. Legal Authority:

In principle, the City shares the same goals of water quality as the Regional Board, however, the City does not believe it should be obliged to provide required assistance in conducting field inspections throughout businesses and construction sites that have General industrial and construction permits. The City does not agree with collateral assistance without an equitable reimbursement mechanism, especially since the SWRCB receives and retains all fees from the permitted Construction and Industrial activities and does not inspect all sites. As written, the Tentative Order will potentially require additional full-time inspectors, administrative support, consultants, and analytical laboratories in order to effectively implement these inspection requirements. The California Constitution requires the State to reimburse local governments for the costs associated with new programs or higher levels of service mandated by the Legislature or any State agency. The Regional Board should comply with the prohibition against unfunded mandates.

Section II. E. Storm Water Management Plan (SWMP):

The permittees have provided a Gantt chart demonstrating an optimistic schedule in developing the SWMP document, including peer review, public review, adoption, and implementation in parallel with our current compliance activities. Based on our estimates, the City believes that the SWMP document can be adopted within the 365 days required by the Tentative Order. However, to have "completed full implementation" as the Tentative Order is currently written will require additional time for reviews, revisions, adopt peripheral ordinances to enforce the programs specified in the SWMP and transfer written text into implementable field activities, develop training material, train inspectors and other field personnel, conduct training among municipal departments, provide modifications to the programs as implementation is attempted, bridging gaps between text and applicability, etc. The City requests that the Tentative Order be revised to provide 9 months to achieve "full implementation" once the SWMP is adopted.

Section II. F. Development Planning:

Various provisions of the Tentative Order require the City to modify its General Plan, land use ordinances, and CEQA process. In the Clean Water Act, Congress recognized that land use was a local matter. Land use planning and zoning lie in the hands of the local governments, and local governments have discretion to determine the content of their land use plans and to choose how to implement those plans. Despite Federal and State policy, the Tentative Order infringes on the authority of local governments to determine the content of their land use plans and how to implement them. The City does not believe that the Regional Board has the authority to impose such requirements. Therefore, the City requests additional discussions with the Regional Board to resolve this issue.

The City of Temecula does not believe that submitting amended ordinances associated with the adopted SUSMP is an appropriate request. The intent of the Tentative Order encompasses NPDES compliance and enforcement through local mechanisms. Local enforcement mechanisms to support the Tentative Order, such as ordinances, should be decided by each permittee. As written, the language conveys that the Regional Board has oversight authority over ordinances. The City requests this language be removed or revised.

The City of Temecula does not believe that it is appropriate to hold the City responsible for non-jurisdictional discharges from agencies comingling their jurisdictions within the city limits such as Caltrans, school districts, Eastern Municipal Water District/RCWD, etc. These agencies have NPDES permits/Waste Discharge Requirements and should be held accountable for their own discharges. The City requests this language reflect accountability to other agencies.

Section II. G. Construction:

The Tentative Order is requiring the City to assist in enforcing the State General permit for construction activities. In principle, the City shares the same goals of water quality as the Regional Board, however, the City does not agree with collateral assistance without an equitable reimbursement mechanism, especially since the SWRCB receives and retains all fees from the permitted construction activities and does not conduct visits at all sites. The Tentative Order requires the City to inspect construction sites that are already covered by State-issued permits. The Regional Board is supposed to inspect these sites, and state law does not allow it to delegate this authority. The City requests further discussions to reach a mutually agreeable solution to this discrepancy.

Section II. H. Existing Development:

The City of Temecula believes the requirement to “implement” designated BMPs at private Commercial and Industrial facilities is excessive. Implementation of BMPs should be the responsibility of each facility. The City can designate BMPs and provide enforcement oversight, but cannot implement the BMPs for each facility. The Tentative Order also requires the City to inspect industrial and commercial sites that are already covered by State-issued permits. The Regional Board is supposed to inspect these facilities, and state law does not allow it to delegate this authority. The City requests the language pertinent to these concerns be removed or revised.

The City of Temecula believes the requirements regarding high-priority residential activities are not reasonable. It is inappropriate to expect the City to monitor or prohibit home/vehicle/garden care on a house-by-house basis and designate BMPs to all homeowners. The City is requesting that existing ordinances already regulating these activities be considered as the minimum BMPs that the City must designate.

Further, it is not fiscally or administratively prudent to require the revision or development of new ordinances to address minimum BMPs for commercial, industrial or residential activities within 365 days of permit adoption. The City requests that the requirements to revise ordinances to implement minimum BMPs be removed or that an extension of 270 days beyond the proposed 365-day schedule be provided to effectively complete implementation of this requirement.

Section II. I. Education:

The City of Temecula is committed to providing in-house training to municipal staff and providing educational material to the general public. In addition, the City is committed to providing guidance to site developers, business owners, and residents with respect to measures intended to achieve the objectives of the Clean Water Act and the Porter-Cologne Act. However, the City believes that it is unreasonable to be expected to provide a “measurable increase in knowledge” or a “measurable change in behavior” among the Construction, Industrial, Commercial, Residential, and Quasi-Governmental sectors, and to be exposed to enforcement actions if “measurable increase” or “measurable change” cannot be demonstrated. Individual NPDES permits, Waste Discharge Requirements, and the State’s General permits do not contain requirements to effectively demonstrate a “measurable increase in knowledge” or “measurable change in behavior and such provisions in the Tentative Order are not justified. The City requests this language be revised or removed.

Section II. J. Illicit Detection and Elimination:

The Tentative Order specifies analytical monitoring of the MS4. The City of Temecula believes that this component should focus on identifying discharge sources, placing the responsibility of controlling or removing the discharge source on the discharger, and requiring sampling and remediation activities on the discharger. The City requests this language be removed, or revised to reflect this obligation on the discharger.

The City of Temecula is committed to assisting in containment-and-clean-up efforts due to sewage spills. However, the City cannot prevent such accidents from occurring. The City is concerned with the Tentative Order’s requirement to “prevent, respond to, contain and cleanup” sewage spills and “prevent the contamination of surface water, groundwater and soil to the MEP”. Sanitary sewers are part of publicly owned treatment works (POTWs). The duty to monitor, inspect and respond to sanitary sewer overflows rests with the operator of the POTW, not with those that do not operate a POTW. The local

POTWs have been issued a separate State permit that should be enforced by the Regional Board. The City requests the tentative Order language reflect accountability to other agencies, including the Regional Board, or remove this requirement.

FACT SHEET

Sections VII.D and VII.E

The draft Fact Sheet states "...the Permittee will ultimately be held responsible for any discharges from the grading projects by the Regional Board...". The draft Fact Sheet also states "The Regional Board will assist municipalities...to bring the site into compliance". The City requests clarification of these statements.

The SWRCB receives fees, in part, through the issuance of NPDES General Permits for Construction Activities involving sites with land disturbances of 1-acre and more, as well as through the issuance of area-wide MS4 permits that require permittees to regulate discharges from construction sites. If the statements above are to be included in the Fact Sheet, then shouldn't a portion of the permitting fees that the SWRCB collects from developers be reimbursed to permittees assisting with the dual-regulating inspection efforts, especially if permittees are expected to accept liability for discharges from third-party construction projects? If partial assistance is the extent of participation by the SWRCB, then permitting fees should be equitably distributed among all participating entities.

Section VIII.B.3

The draft Fact Sheet states, "The Permittees have not provided monitoring data...threat to water quality". The Permittees have not been required to provide monitoring data that does or does not support USEPA's conclusion that street wash water poses a threat to water quality. Further, the City is not unaware of either the generation or discharge of "street wash water" to the MS4s owned and operated by any of the Permittees within the Riverside County SMR area nor has Regional Board staff provided any data to support that this activity is occurring within Riverside County SMR area. This sentence should be removed from the draft Fact Sheet.

The Fact Sheet states, "Pursuant to Requirement B.1...separate NPDES permit".

Clarity requested. Can the Regional Board prohibit discharge-categories that are not listed in Requirement B.2? It appears that an implied prohibition is effected by simply not granting an NPDES permit. This paragraph should be revised or removed.

Section VIII.D.1

The draft Fact Sheet states "...Permittees shall develop and implement legal authority...or similar means...".

Clarity requested. This statement indicates that the Tentative Order requirements may be included in guidance manuals or policy documents, but not necessarily as ordinances. The City requests that the Tentative Order language be revised to exclude ordinances as the sole source of legal authority.

Construction Industry Coalition on Water Quality

January 28, 2004

Megan Quigley
Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123

Comments on Municipal Storm Water Permit for Santa Margarita Watershed

Dear Ms. Quigley:

On behalf of the more than 3,300 member companies of the Construction Industry Coalition on Water Quality (CICWQ), we would like to acknowledge the time, effort and expertise that went into developing the proposed Municipal Storm Water Permit (Permit) and thank the San Diego Regional Water Quality Control Board for this opportunity to express our concerns with the Permit.

CICWQ is comprised of the four major construction and building industry trade associations in Southern California. These include the Associated General Contractors of California (AGC), the Building Industry Association of Southern California (BIA/SC), the Engineering Contractors Association (ECA) and the Southern California Contractors Association (SCCA). These organizations work collectively to provide the necessary infrastructure and support for the region's business and residential needs.

The membership of CICWQ is comprised of construction contractors, labor unions, landowners, developers, and homebuilders throughout the region and state. All segments of the coalition are impacted by the proposed Permit, including construction employees who rely on jobs in the region, landowners within the Board's jurisdictional boundaries and potential builders who require land resources to satisfy the ever-growing demand for housing.

This Permit will most likely yield a number of unintended consequences that could further exacerbate our housing crisis. These regulations will likely result in fewer, but more expensive residential projects being completed in the future, due to additional costs and restrictions involved in complying with these regulations. This will, in turn, compromise job growth, housing production and the ability of residents to own their own home. These factors can have a significant negative effect on the regional economy.

CICWQ is very supportive of the Board's efforts to develop new ways for improving our quality of life through improved water quality. However, the building and construction industries want to ensure that these efforts are practical, achievable and will result in actual improved water quality.



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Based on the foregoing, we ask that you consider the following comments pertaining to the Permit and that you work with CICWQ to find solutions that will protect jobs, housing and good water quality for the residents in our region.

Findings Discussion

1. **Finding 4** states the following:

Urban runoff contains waste, as defined in the California Water Code (CWC), and pollutants that adversely affect the quality of the waters of the State. The discharge of urban runoff from an MS4 is a "discharge of pollutants from a point source" into waters of the United States as defined in the Clean Water Act.

Comment: The Regional Board proposes to classify all storm water and all dry weather flow as containing "waste" *per se*. That is, all storm water, whether it reaches the storm drain by flowing over undeveloped open space or over a parking lot, whether or not it intercepts waste materials on its way to the storm drain, frankly, whether it contains any pollutants or is clean, is all considered to contain "waste" by the Regional Board. The same is true for dry weather flow, regardless of its source or concentration. This gross extension of the term "waste" turns rainfall into wastewater without any specific consideration of the actual contents of the runoff produced. This overbroad construction of the law is invalid.

Where industrial or municipal activity resulted in the introduction of "waste" into storm water, that specific storm water could be subject to discharge requirements. See, e.g., Aluminum Co. of Am., SWRCB Order No. WQ 93-9 (1993) (discharge of acid-contaminated water from a mine was "waste"); Lake Madrone Water Dist. v. State Water Res. Control Bd., 209 Cal. App. 3d 163, 166 (1989) (discharges from reservoir operated in a way to concentrate sediment before release into a creek was "waste" where discharge choked pools in creek and clogged "spawning areas so heavily as to destroy fish and aquatic life."). These cases are distinguishable from the broad sweep of the Regional Board's finding which proposes to classify every drop of rain water in the Santa Margarita Watershed reaching a public storm drain as containing "waste."

2. **Finding 10** states the following:

Peak storm water discharge rates, velocities and durations must be controlled to prevent downstream erosion and protect stream habitat. When natural vegetated pervious ground cover is converted to impervious surfaces such as paved highways, streets, rooftops, and parking lots, the natural absorption and infiltration abilities of the land are lost.

Therefore, runoff leaving a developed urban area is significantly greater in volume, velocity, peak flow rate, and pollutant load than pre-development runoff from the same area. The

increased volume, velocity, rate, and duration of runoff greatly accelerate the erosion of downstream natural channels.

Comment: While it is true that urbanization affects hydrology, such effects on the flow regime occur regardless of what pollutants are present in stormwater or, indeed, regardless of whether or not any pollutants are added to stormwater as it traverses the land. While such effects may constitute "pollution" as that term is defined in the Clean Water Act, they do not constitute the "discharge of pollutants," as that phrase is defined in the Clean Water Act. "EPA does not consider flow to be a pollutant."¹ The public storm drain program is limited to controls on pollutant discharges. Other Clean Water Act programs not administered by the Regional Board are designed to address general pollution problems, such as might result from bank erosion and widening of channels. Water per se, regardless of what constituents are in it, is not a "pollutant" regulated under the NPDES program, within the statutory definition. Thus, the regulation of stormwater flows in this Permit is void under the Clean Water Act to the extent it is regulating flow velocities, flow volumes and flow durations.

3. **Finding 14** states the following:

Developing minimum BMPs and implementing or requiring their implementation at industrial and commercial facilities, construction sites, and residential areas is necessary for the Permittees to ensure that, ultimately, discharges of pollutants into and from its MS4 are reduced to the MEP.

Comment: Neither federal nor state law provides the Regional Board with the authority to regulate discharges into the MS4. Clean Water Act Section 402(p)(3)(B)(iii) is limited to "discharges from municipal storm sewers" (emphasis added). The statute does not authorize the regulation of discharges into MS4s. Congress likely refrained from regulating discharges into MS4s because any such regulation would impinge upon the authority of local officials to regulate land use and development.²

¹ Revisions to the Water Quality Planning and Management Regulation and Revisions to the National Pollutant Discharge Elimination System Program in Support of Revisions to the Water Quality Planning and Management Regulation, 65 Fed. Reg. 43586, 43619 (July 13, 2000). Case law interpreting the Clean Water Act uniformly has found the definition of "pollutant" to not include downstream erosion. See e.g., National Wildlife Fed'n v. Gorsuch, 693 F.2d 156, 171-172 (D.C. Cir. 1982) (holding that discharges from dams were not discharges of pollutants, but rather were discharges that altered water quality conditions – namely scouring the downstream channel – and as such, did not fall under the definition of "pollutant" and did not require an NPDES permit); Missouri ex rel. Ashcroft v. Department of the Army, 672 F.2d 1297, 1303 (8th Cir. 1982) (finding that fluctuations in flow rates of water that created downstream erosion did not result in the "discharge of a pollutant" under the CWA and the relevant permit was void to the extent it regulated downstream erosion).

² And thus, would appear to disregard the Congressional intent stated in CWA § 101(b) which reserves primary land use authority to the States, as opposed to the federal government or an agency operating under federal authority.

throughout this finding should also be changed to "waters of the U.S." Without changing the wording in these instances, this finding has no legal foundation, especially in reference to 40 CFR 131.10(a) as stated.

6. **Finding 17** states the following:

Historic and current developments make use of natural drainage patterns and features as conveyances for urban runoff. Urban streams used in this manner are both MS4s and receiving waters.

Comment: This finding completely lacks any foundation. First of all, MS4s are well defined within each municipal jurisdiction, and may or may not include natural drainage patterns and features. Second of all, receiving waters are considered to be surface waters as defined by the Basin Plan. Therefore, these natural drainage patterns would only be considered a receiving water if they were included as a surface water in the Basin Plan with listed beneficial uses.

7. **Finding 18** states the following:

As operators of the MS4s, the Permittees cannot passively receive and discharge pollutants from third parties. By providing free and open access to an MS4 that conveys discharges to waters of the U.S., the operator essentially accepts responsibility for discharges into the MS4 that it does not prohibit or control. These discharges may cause or contribute to a condition of contamination or exceedances of receiving water quality objectives.

Comment: The regional board is without authority to regulate third parties' private property under the municipal permit. At issue herein is a municipal permit regulated under the NPDES provisions of the Clean Water Act. (See 33 U.S.C. § 1342(p)(3)(B).) The subject of the regulation is the MS4 *itself* and discharges there from. The permittee/Permittee (i.e., regulated entity) is the operator of the MS4. Notwithstanding this relatively straightforward regulatory concept, the proposed Permit far exceeds the bounds of permissible regulation thereunder. Specifically, under the guise of this municipal NPDES permit, the Regional Board asserts jurisdiction over third parties' private property. The proposed Permit seeks to regulate the *anticipated* sources of *potential* discharges, before they ever even actually discharge into the MS4, and certainly well before such substances are actually discharged from the MS4. This exceeds the Regional Board's authority under the operative provisions of the Clean Water Act.

This fact is highlighted by the Clean Water Act's wholly independent provision for regulation of actual construction sites. (See 33 U.S.C. §§1311, 1342(p)(3)(A).) Those separate provisions of the Clean Water Act provide specific and limited constraints for actual site regulation involving construction activities. But for whatever reason, this Regional Board

has not or cannot effect such regulations over areas generally regulated via California's General Construction Permit. This fact, however, does not justify the hybridization of distinct regulatory measures. Again, at issue here is the MS4 and its operator, not private, third party landowners. The regulation proposed in the subject permit is nothing short of attempted usurpation of local land use authority by this state entity.

Additionally, the Regional Board fails to demonstrate the constitutional justification for the exercise of federal jurisdiction over these wholly intrastate facilities, in advance of any discharge to waters of the United States (e.g., Commerce Clause).

For all of these reasons, the Regional Board is without jurisdiction under the subject permit to exert regulatory authority and mandates over third parties' private property, as provided in the proposed permit.

8. **Finding 29** states the following:

CEQA: The issuance of waste discharge requirements and an NPDES permit for the discharge of urban runoff from MS4s to waters of the United States is exempt from the requirement for preparation of environmental documents under the California Environmental Quality Act (CEQA) (Public Resources Code, Division 13, Chapter 3, § 21000 et seq.) in accordance with the CWC § 13389.

Comment: The Regional Board correctly cites the provision of the California Water Code exempting waste discharge requirements from Chapter 3 of the California Environmental Quality Act ("CEQA"); however, CEQA does apply to Regional Board permits to the extent that they contain provisions not required by the Clean Water Act.³ The Clean Water Act does not require that municipal stormwater meet Water Quality Based Effluent Limits (WQBELs). Since the permit includes provisions not required by the Clean Water Act, the Regional Board cannot issue the permit without first conducting environmental review under CEQA. Where, as here, the action triggering CEQA compliance is a permit of countywide applicability with significant environmental implications, the Regional Board should prepare an Environmental Impact Report, including an alternatives analysis.

Prohibitions Discussion:

1. A. **Prohibitions** states the following

³ See e.g., Committee for a Progressive Gilroy v. State Water Res. Control Bd., 192 Cal. App. 3d 847, 862 (limiting the CEQA exemption of § 13389 of the Cal. Water Code to those "actions required under" the Clean Water Act).

1. *Discharges into and from MS4s in a manner causing, or threatening to cause, a condition of pollution, contamination, or nuisance (as defined in CWC § 13050), in waters of the state are prohibited.*
2. *Discharges from MS4s that cause or contribute to exceedances of receiving water quality objectives for surface water or groundwater are prohibited.*
3. *Discharges from MS4s containing pollutants which have not been reduced to the MEP are prohibited.*
4. *In addition to the above prohibitions, discharges from MS4s are subject to all Basin Plan prohibitions cited in **Attachment A** to this Order.*

Comment: The permit, by regulating flow both into and out of the MS4, exceeds the jurisdiction of the NPDES program. Neither federal nor state law provides the Regional Board with the authority to regulate discharges into the MS4. Clean Water Act Section 402(p)(3)(B)(iii) is limited to "discharges from municipal storm sewers" (emphasis added). The statute does not authorize the regulation of discharges into MS4s. Congress likely refrained from regulating discharges into MS4s because any such regulation would impinge upon the authority of local officials to regulate land use and development.⁴

In addition, these requirements are not included in State Water Resources Control Board (State Board) Order No. WQ 99-05, which required specific receiving water limitation language to be included in future municipal stormwater permits. These two items, if left in the Permit, would most likely create a situation where all dischargers would be in non-compliance of this Order from day one of implementation. In fact, these provisions violate, SWRCB Order No. 99-05. It was the "shall not cause or contribute" language that Order 99-05 expressly struck and replaced. "It is hereby ordered that Order WQ 98-01 will be amended to remove the receiving water limitation language contained therein and to substitute the EPA language." (Order 99-05, p. 1, emphasis added.)

The "EPA language" referred to does not include the "cause or contribute" language that was present in Order 98-01. On the contrary, the EPA language outlines a series of practicable safeguards to reasonably accomplish Basin Plan objectives. Thus, this Permit's strict receiving water prohibitions do not comport with Order 99-05. Further, Order 99-05 expressly includes in its language that it is a "precedential decision," unlike the SUSMP Order. In defending continued inclusion of the "cause or contribute" receiving water limitation language from rejected Order 98-01, the administrative record appears to rely on a pattern of including identical receiving water limitation language in other permits. This defense of "well, we've always done it that way" does not in any way validate an inappropriate practice. At every turn, the point is made that the receiving water limitation

⁴ And thus, would appear to disregard the Congressional intent stated in CWA § 101(b) which reserves primary land use authority to the States, as opposed to the federal government or an agency operating under federal authority.

language is consistent with Order 99-05. From the plain face of Order 99-05, this is clearly not the case. The Permit's later inclusion of the language contained in Order 99-05 does not rectify this error. Order 99-05 states outright that the "cause or contribute" language of 98-01 is removed and replaced with the language of Order 99-05. The provisions are mutually exclusive, and Order 99-05 resolved which controls.

Developing Planning

1. Section F.1 Assess General Plan states the following:

Each Permittee's General Plan or equivalent plan (e.g., Comprehensive, Master, or Community Plan) shall include water quality and watershed protection principles and policies to direct land-use decisions and require implementation of consistent water quality protection measures for development projects. As part of its Individual SWMP, each Permittee shall provide a workplan with a time schedule detailing any changes to its General Plan regarding water quality and watershed protection. Examples of water quality and watershed protection principles and policies to be considered include the following:

- (1) Minimize the amount of impervious surfaces and directly connected impervious surfaces in areas of new development and redevelopment and where feasible slow runoff and maximize on-site infiltration of runoff.*
- (2) Implement pollution prevention methods supplemented by pollutant source control and treatment control BMPs. Use small collection strategies located at, or as close as possible to, the source (i.e., the point where water initially meets the ground) to minimize the transport of urban runoff and pollutants offsite and into an MS4.*
- (3) Preserve, and where possible, create or restore areas that provide important water quality benefits, such as riparian corridors, wetlands, and buffer zones. Encourage land acquisition of such areas.*
- (4) Limit disturbances of natural water bodies and natural drainage systems caused by development including roads, highways, and bridges.*
- (5) Prior to making land use decisions, utilize methods available to estimate increases in pollutant loads and flows resulting from projected future development. Require incorporation of structural and non-structural BMPs to mitigate the projected increases in pollutant loads and flows.*
- (6) Avoid development of areas that are particularly susceptible to erosion and sediment loss; or establish development guidance that identifies these areas and protects them from erosion and sediment loss.*

- (7) *Reduce pollutants associated with vehicles and increasing traffic resulting from development.*
- (8) *Post-development runoff from a site shall not contain pollutant loads that cause or contribute to an exceedance of receiving water quality objectives or which have not been reduced to the maximum extent practicable.*

Comment: It does not make sense to use small collection strategies located at, or as close as possible to, the source for areas where economies of scale make it much more technically, economically and environmentally beneficial to use regional/watershed multi-use solutions (such as parks and ball fields), located prior to discharging into a Water of the U.S., that would be better designed and maintained.

The use of the words minimize, maximize and reduce are overly broad and subject to wide discretion and problematic enforcement. We suggest inserting the wording "to the extent technically and economically feasible" after each of these words. In addition, the requirement to minimize the amount of impermeable surfaces may have the unintended consequence of creating urban sprawl and decreasing the amount of housing that will become available in the future. To create less impermeable surfaces will potentially lead developers to build with lower densities in outlying areas, thus flying in the face of high density "smart growth" development that attempts to address the housing supply issue with minimal impact to open space.

Item 7 attempts to regulate traffic resulting from development. This is another example of the regional board's attempt to supercede local land use control. Traffic considerations, as well as water quality and environmental concerns are already addressed through the CEQA process and are unnecessary, and in fact illegal, in this Permit.

Item 8 is an example of a water quality based effluent limit (WQBEL) requirement and is without legal standing and merit (see General Issues section for detailed analysis).

2. Section F.2. Modify Development Project Approval Processess states the following:

Each Permittee shall include development project requirements in local permits to ensure that pollutant discharges and runoff flows from development are reduced to the maximum extent practicable and that receiving water quality objectives are not violated throughout the life of the project. Such conditions shall, at a minimum:

- (a) *Require project proponent to implement applicable pollution prevention and source control BMPs for applicable development projects.*

- (b) Require project proponent to implement site design/landscape characteristics where feasible which maximize infiltration, provide retention, slow runoff, and minimize impervious land coverage for all development projects.*
- (c) Require project proponent to implement buffer zones for natural water bodies, where feasible. Where buffer zone implementation is infeasible, require project proponent to implement other buffers such as trees, lighting restrictions, access restrictions, etc.*
- (d) When known, require industrial facility operators subject to the General Industrial Permit, to provide evidence of permit coverage prior to occupancy.*
- (e) Require project proponent to ensure its grading or other construction activities meet the provisions specified in Section G of this Order.*
- (f) Require project proponent to provide proof of a mechanism which will ensure ongoing long-term maintenance of all structural post-construction BMPs.*

Comment: We are very supportive of the establishment of fair, consistent and enforceable water quality regulations that also consider the need to develop housing, however several of these requirements are open to very inconsistent interpretation, implementation and enforcement. This inconsistency is caused by the use of such words as implement, maximize, minimize, slow and ensure without guidance as to what constitutes compliance. For example, how would a project proponent ensure long-term maintenance of BMPs. They can only ensure maintenance up until the time that the property is sold. After that, they no longer have jurisdiction over the property or the BMPs. It is not the role of the original property owner to be responsible for the actions of all future property owners. This would be the same as requiring an automobile dealership to be responsible for the ongoing maintenance of all the vehicles that it sells.

3. Section F.2.b Standard Urban Storm Water Mitigation Plans (SUSMPs) states the following:

Within 365 days of adoption of this Order, each Permittee shall develop, adopt and implement a Standard Urban Storm Water Mitigation Plan (SUSMP) to reduce pollutants to the MEP and to maintain or reduce downstream erosion and protect stream habitat from all Priority Development Projects. Priority Development Projects are: a) all new development projects, and those redevelopment projects that create, add or replace at least 5,000 square feet of impervious surfaces on an already developed site, that are listed under the project categories or locations in Requirement F.2.b.(1) below. Redevelopment includes, but is not limited to: the expansion of a building footprint or addition or replacement of a structure; structural development including an increase in gross floor area and/or exterior construction or remodeling; replacement of impervious surface that is not part of a routine maintenance activity; and land disturbing activities related with structural or impervious surfaces. Where significant redevelopment results in an increase of less than fifty percent of the impervious surfaces of a previously existing development, and the existing development was not subject

to SUSMP requirements, the numeric sizing criteria discussed in section F.2.b.(3) applies only to the addition, and not to the entire development. Each Permittee shall submit both the adopted SUSMP and amended ordinances to the SDRWQCB no later than 365 days after the adoption of the Order.

Immediately following adoption of its SUSMP, each Permittee shall ensure that all new Priority Development meet SUSMP requirements. The SUSMP requirements shall apply to all priority projects or phases of priority projects that have not yet begun grading or construction activities. If a Permittee determines that lawful prior approval of a project exists, whereby application of SUSMP requirements to the project is infeasible, SUSMP requirements need not apply to the project.

Comment: We find it inappropriate that the other Permittees under the jurisdiction of the San Diego Regional Water Quality Board faced with the implementation of similar, if not identical requirements were given a year and a half in which to implement the SWMP requirements. We see no reason why the Permittees and the development community within the Santa Margarita Watershed not be given the same year and a half in which to implement the SWMP requirements. These requirements will be a drastic departure from the current set of rules.

In addition, we feel that it is very important that all Permittees and project applicants understand and are consistent with language that addresses projects that have already received prior approvals. Therefore, we recommend the following language, "where new development is defined as projects for which tentative tract or parcel map approval was not received by October 1, 2005 and new re-development is defined as projects for which all necessary permits were not issued by October 1, 2005. However, projects that have not commenced grading by the initial expiration date of the tentative tract or parcel map approval shall be deemed a new development project as defined in this section. New development does not include projects receiving map approvals after October 1, 2005 that are proceeding under a common scheme of development that was the subject of a tentative tract or parcel map approval that occurred prior to October 1, 2005.

We also do not support the total reliance of this Permit on SUSMP provisions. Instead we support creating a process that promotes regional mitigation facilities to protect water quality from both new-development and existing development.

The SWRCB, in response to a petition regarding the Standard Urban Storm Water Mitigation Plans (SUSMPs) portion of the Los Angeles MS4 Permit, issued Order No. WQ 2000-11. In this Order the SWRCB states, "As a long-term strategy, municipal storm water dischargers should work to establish regional mitigation facilities, which may be more cost-effective and more technically effective than mitigation structures at individual developments."

Instead of promoting regional mitigation facilities, this Permit contains SUSMP language that is not in line with the previous direction outlined in Order No. WQ 2000-11. Rather than imposing inappropriate SUSMP requirements, we urge the Board to allow the local communities the incentive to develop regional mitigation programs and the opportunity to shape the development of post-construction design standards on a local level so that meaningful programs will be implemented and will complement, rather than usurp, the existing land use regulatory processes. Where technically and economically justified, these programs will focus on regional mitigation facilities, in lieu of mitigation structures at individual developments. As outlined in the attached Brown and Caldwell's April 2003 study entitled, "Regional Solutions for Treating Stormwater in Los Angeles County: A Macrofeasibility Study", regional mitigation facilities have the following goals and benefits:

1. Water Quality Improvements
 - a. Treat storm water from existing development as well as new development and redevelopment
 - b. Regional, or watershed, facilities can be optimally located and sized to reduce pollutant loads from all tributary areas
 - c. Regional, or watershed, facilities can address both dry-weather flows and wet-weather flows
 - d. Regional, or watershed, facilities can enhance water quality to a greater degree by providing larger areas for more highly effective, land-intensive treatment methods, such as filtration technologies
 - e. Regional, or watershed, facilities can be more easily upgraded to meet future water quality regulations
 - f. Regional, or watershed facilities treat an entire sub-watershed and not just new development, or redevelopment, thus overall improvements in water quality can be realized more quickly
2. Cost-effectiveness
 - a. Regional, or watershed facilities are inherently more cost-effective to construct and maintain
 - b. Economies of scale enable greater pollutant reductions for the capital and ongoing operation and maintenance costs expended.
3. Long-term Maintenance
 - a. Surveys of maintenance effective of on-site facilities on private land have shown that the majority were failing due to lack of maintenance
 - b. Regional, or watershed facilities have a much higher likelihood of being maintained properly so they operate in perpetuity
4. Beneficial reuse of stormwater
 - a. Urban runoff is increasingly being viewed as a potential resource, especially given the water supply challenges that California currently faces

- b. Regional, or watershed facilities offer the flexibility for future enhancements that would support integrated resource planning and make better overall use of limited water supplies
- 5. Multiple uses
 - a. Because of their larger size and jurisdiction, regional, or watershed facilities present more opportunities to serve multiple purposes
 - b. Regional, or watershed, facilities can often provide other values, such as, habitat improvements, public park and/or recreation facility creation or enhancement, and green space preservation
- 4. **Section F.b.2 BMP Requirements** states the following

The SUSMP shall include a list of recommended source control, and treatment control BMPs. The SUSMP shall require all Priority Development projects to implement a combination of on-site BMPs (to treat the runoff specifically generated from each project) selected from the recommended BMP list, including at a minimum (1) source control BMPs, and (3) treatment control BMPs. The BMPs shall, at a minimum:

- i. *Control the post-development urban runoff discharge velocities, volumes, durations and peak rates to maintain or reduce pre-development downstream erosion, and to protect stream habitat;*
- ii. *Conserve natural areas where feasible;*
- iii. *Minimize storm water pollutants of concern in urban runoff from the Priority Development Projects (through implementation of source control BMPs). Identification of pollutants of concern shall include, at a minimum, consideration of any pollutants for which water bodies receiving the development's runoff are listed as impaired under Clean Water Act section 303(d), any pollutant associated with the land use type of the development, all pollutants commonly associated with urban runoff;*
- iv. *Be effective at removing or treating pollutants of concern associated with the project;*
- v. *Minimize directly connected impervious areas where feasible;*
- vi. *Protect slopes and channels from eroding;*
- vii. *Include storm drain stenciling and signage;*
- viii. *Include properly designed outdoor material storage areas;*
- ix. *Include properly designed trash storage areas;*
- x. *Include proof of a mechanism to be provided by the project proponent or Permittee, which will ensure ongoing long-term BMP maintenance;*
- xi. *Include additional water quality provisions applicable to individual priority project categories;*
- xii. *Be correctly designed so as to remove pollutants to the MEP;*
- xiii. *Be implemented close to pollutant sources, where feasible, and prior to discharging into receiving waters;*

xiv. Ensure that post-development runoff does not contain pollutant loads which cause or contribute to an exceedance of water quality objectives or which have not been reduced to the MEP.

Under no circumstances can a BMP be constructed in a receiving water.

Comments: The Permit directs permittees to “minimize storm water pollutants of concern in urban runoff,” as well as, “be effective at removing or treating pollutants of concern associated with the project.” Neither of these requirements considers feasibility, costs, or any other factor used to define MEP. A literal reading of these requirement mandates project proponents to produce pristine drinking water from their project. All discussions of pollutant removal should focus on the reduction of pollutants to the MEP.

The Permit directs permittees to “ensure that post-development runoff does not contain pollutant loads which cause or contribute to an exceedance of water quality objectives.” This requirement is discussed at length in the “General Issues” section of this letter. In summary, the Regional Board has made no showing that any of these unqualified directives are consistent with MEP. Thus, these unqualified, absolute directives should be stricken from the Permit or somehow made to conform with the MEP standard.

The last sentence of this section states that “under no circumstances can a BMP be constructed in a receiving water”. This statement is completely without legal foundation and in fact removes one of the most cost-effective solutions available for protecting beneficial uses in the Waters of the U.S. These solutions are multi-use regional solutions that would address the pollutants of concern in urban runoff prior to its discharge into Waters of the U.S. Therefore, this last sentence should be stricken.

7. Section F.1.b.2.h. Infiltration and Groundwater Protection states the following:

Infiltration and Groundwater Protection – To protect groundwater quality, each Permittee shall apply restrictions to the use of treatment control BMPs which are designed to primarily function as infiltration devices (such as infiltration trenches and infiltration basins). Such restrictions shall ensure that the use of such infiltration structural treatment BMPs shall not cause or contribute to an exceedance of groundwater water quality objectives. At a minimum, use of treatment control BMPs which are designed to primarily function as infiltration devices shall meet the following conditions: As part of the SUSMP, the Permittees may develop alternative restrictions on the use of treatment control BMPs which are designed to primarily function as infiltration devices.

- i. Urban runoff shall undergo pretreatment such as sedimentation or filtration prior to infiltration.*
- ii. All dry weather flows shall be diverted from infiltration devices.*

- iii. *Pollution prevention and source control BMPs shall be implemented at a level appropriate to protect groundwater quality at sites where infiltration structural treatment BMPs are to be used.*
- iv. *Infiltration treatment control BMPs shall be adequately maintained so that they remove pollutants to the MEP.*
- v. *The vertical distance from the base of any infiltration structural treatment BMP to the seasonal high groundwater mark shall be at least 10 feet. Where groundwater basins do not support beneficial uses, this vertical distance criteria may be reduced, provided groundwater quality is maintained.*
- vi. *The soil through which infiltration is to occur shall have physical and chemical characteristics (such as appropriate cation exchange capacity, organic content, clay content, and infiltration rate) which are adequate for proper infiltration durations and treatment of urban runoff for the protection of groundwater beneficial uses.*
- vii. *Infiltration treatment control BMPs shall not be used for areas of industrial or light industrial activity; areas subject to high vehicular traffic (25,000 or greater average daily traffic on main roadway or 15,000 or more average daily traffic on any intersecting roadway); automotive repair shops; car washes; fleet storage areas (bus, truck, etc.); nurseries; and other high threat to water quality land uses and activities as designated by each Permittee.*
- viii. *Infiltration and treatment control BMPs shall be located a minimum of 100 feet horizontally from any water supply wells. As part of the SUSMPs, the Permittees may develop alternative restrictions on the use of treatment control BMPs that are designed to primarily function as infiltration devices.*

Comment: Requiring pretreatment prior to the use of all infiltration BMPs is not consistent with most design standards available for the installation of infiltration BMPs. Pretreatment has not been found necessary in most instances. The need for pretreatment should be determined on a case-by-case basis, and left to the local permitting agency to decide. In fact, as far as we can tell, the San Diego Regional Water Quality Control Board is the only Regional Board in Southern California with this requirement.

The requirement for dry weather flows to be diverted from infiltration devices does not make sense either, as runoff from irrigation systems, footing drains, rising ground water, springs, etc. are allowable dry weather flows and should definitely be designed to flow through the infiltration device as opposed to the street. It makes a lot more sense to infiltrate these flows, and let them replenish groundwater, than to just let them discharge into the street.

8. Section F.2.b.9 Downstream Erosion states the following:

The Permittees shall develop numeric criteria to ensure that discharges from Priority Development Projects maintain or reduce pre-development downstream erosion and protect stream habitat. At a minimum, numeric criteria shall be developed to control urban runoff

discharge velocities, volumes, durations and peak rates in order to maintain or reduce pre-development downstream erosion and protect stream habitat. Development of the numeric criteria with its supporting documentation shall be completed in 2008 and submitted with the Permittees' application for renewal of this Order. The Permittees shall be prepared to implement the numeric criteria upon renewal of this NPDES permit in April 2009.

Comment: The Regional Board is mistaken that it is within its authority to regulate the effects on the flow regime.⁵ While such effects may constitute "pollution" as that term is defined in the CWA, they do not constitute the "discharge of pollutants," as that phrase is defined in the CWA. The MS4 program is limited to controls on pollutant discharges. Other CWA programs not administered by the Regional Board are designed to address general pollution problems, such as might result from downstream erosion and scour.⁶

MS4 permits must include, "controls to reduce the *discharge of pollutants* . . . and such other provisions . . . appropriate for the control of such *pollutants*." 33 U.S.C. § 1342(p)(3)(b)(iii), CWA § 402(p)(3)(b)(iii) (emphasis added). The term "pollutant" as used in sections 301 and 402 is defined by the CWA to mean:

dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.
(33 U.S.C § 1362(6), CWA § 502(a))

Water *per se*, regardless of what constituents are in it, is not within this statutory definition. Even "EPA does not consider flow to be a pollutant . . ." ⁷ The Regional Board attempts to circumvent this problem by defining all urban runoff as "waste." However, simply because urban runoff may not be of pristine water quality, does not mean that its erosive capacity, once it enters a stream channel, is subject to the MS4 program.

⁵ Also, the Regional Board's regulation of stream habitat—not tied to the discharge of waste—is beyond its jurisdiction and is an invalid permit condition. Streambed alteration is regulated under Section 1603 of the California Fish & Game Code, not under the Porter-Cologne Act. Other aspects of the Permit attempting to regulate habitat likewise are invalid.

⁶ Another respect in which the Permit illegally regulates "pollution" is through the provision redefining receiving waters to be part of the MS4 system. Permit, ¶ 8 ("the urban stream is both an MS4 and a receiving water."). This redefinition by fiat of open waters as public storm drains has the effect of pulling into the Permit overland, truly nonpoint, sheet flow that enters these waters. Pollutants entering these receiving waters in this way are not point source discharges regulable under the Regional Board's NPDES and MEP authority. Thus, the Permit is invalid and overbroad in this respect. The Regional Board is not authorized to subject such flow to a permit or re-classify waters of the United States as a public storm drain.

⁷ Revisions to the Water Quality Planning and Management Regulation and Revisions to the National Pollutant Discharge Elimination System Program in Support of Revisions to the Water Quality Planning and Management Regulation, 65 Fed. Reg. 43586, 43619 (July 13, 2000).

CWA case law uniformly has found the definition of “pollutant” to not include downstream erosion. In *National Wildlife Fed’n v. Gorsuch*, 693 F.2d 156 (D.C. Cir. 1982), the National Wildlife Federation argued that dams require NPDES permits, and that discharges from dams amounted to a “discharge of a pollutant.” The court acknowledged that among the water quality problems that may be caused by dams is the discharge of waters with the potential to cause downstream erosion. While stating that discharges from dams usually contain less sediment than upstream water, the court stated that, “the river will ‘tend to restore its equilibrium [sediment] loading by scouring the downstream channel.’” *Id.* at 164 (alteration in original). However, the court held that discharges from dams were not discharges of pollutants, but rather, were discharges that altered water quality conditions, and as such, did not fall within the CWA definition of “pollutant” and did not require a NPDES permit. See *id.* at 171–72.

With respect to the definitions of “pollutant” and “pollution” in the CWA, the court noted that:

Congress purposely limited the federal NPDES permit program to certain well-recognized pollutants and left control of other water altering substances or conditions to the states under § 208.⁸ (*Id.* at 172)

Relying upon legislative history, the court stated:

Had it wanted to do so, [Congress] could easily have chosen suitable language, e.g., ‘all pollution released through a point source.’ Instead, as we have seen, the NPDES system was limited to ‘addition’ of ‘pollutants’ from a ‘point source’. (*Id.* at 176)

The court was persuaded by U.S. EPA’s interpretation, “under which dams would not require discharge permits, but would instead be regulated under state-developed area-wide waste treatment management plans pursuant to § 208 of the [CWA].” *Id.* at 161.

Other courts considering these definitions have reached similar conclusions. At issue in the case of *Missouri ex rel. Ashcroft v. Department of the Army*, 672 F.2d 1297, 1303 (8th Cir. 1982), was soil erosion generated, “by fluctuations in the flowage of water from the power plant and from the reduction of oxygen as a result of water turbulence at the dam.” The Court held that:

⁸ In fact, there is so much regulation of regional “pollution” in the Permit, it is arguable that the Permit is a *sub rosa* 208 program, and invalid for that reason. By establishing two separate programs—the NPDES program and the 208 program—in the CWA, Congress recognized the “distinction as to the kinds of activities that are to be regulated by the federal government [or state water quality agency under delegation] and the kinds of activities which are to be subject to some measure of local control.” *Gorsuch*, 693 F.2d at 176 (quoting S.Rep. No. 370, at 10 (1977)). Control of “pollutants” falls to the agency administering the NPDES program—in California the regional boards—whereas control of “pollution” is managed under the 208 program by the Southern California Association of Governments.

operation of the dam did not result in the discharge of a pollutant as the term is defined by the [CWA] because the discharge of a pollutant requires an addition of a pollutant from a point source and neither term applied to soil erosion or the oxygen content of the water. (*Id.* at 1304)⁹

Thus, the Permit is void under the CWA to the extent it is regulating downstream erosion caused by storm water. Such water quality control is reserved to the Section 208 program and is not part of the MS4 program.

9. Section G Construction

a. Section G.3 Modify Construction and Grading Approval Process states the following:

Each Permittee shall develop and implement a process to ensure that the discharge of pollutants to the MEP are applicable to construction and grading permits and plans prior to their approval and issuance. Such BMPs shall include the following requirements or their equivalent:

- (a) *Require project proponent to develop and implement a plan to manage storm water and non-storm water discharges from the site at all times;*
- (b) *Require project proponent to minimize grading during the wet season and coincide grading with seasonal dry weather periods to the extent feasible. If grading does occur during the wet season, require project proponent to implement additional BMPs for any rain events which may occur, as necessary for compliance with this Order;*
- (c) *Require project proponent to emphasize erosion prevention as the most important measure for keeping sediment on site during construction;*
- (d) *Require project proponent to utilize sediment controls as a supplement to erosion prevention for keeping sediment on-site during construction, and never as the single or primary method;*
- (e) *Require project proponent to minimize areas that are cleared and graded to only the portion of the site that is necessary for construction;*
- (f) *Require project proponent to minimize exposure time of disturbed soil areas;*
- (g) *Require project proponent to temporarily stabilize and reseed disturbed soil areas as rapidly as possible;*

⁹ See also, *United States ex rel. Tenn. Valley Auth. v. Tennessee Water Quality Control Bd.*, 717 F.2d 992, 998-99 (6th Cir. 1983) ("Although alterations in the properties of the water are 'pollution' under the broader definition contained in section 502(19), . . . all alterations do not fit the narrower definition of 'pollutants' contained in section 502(6). . . . Congress [has] treated 'pollutants' and 'pollution' differently and . . . section 402 is concerned with the addition of pollutants, not with water pollution generally." The Permit at issue in this petition is a section 402 permit.)

- (h) *Require project proponent to permanently revegetate or landscape as early as feasible;*
 - (i) *Require project proponent to stabilize all slopes; and*
 - (j) *Require project proponents subject to the General Construction Permit to provide evidence of existing permit coverage.*
- b. **Section G.5 BMP Implementation** states the following:
- a. *Each Permittee shall designate a set of minimum BMPs that ensure the following at all construction sites:*
 - (1) *Erosion prevention;*
 - (2) *Seasonal restrictions on grading;*
 - (3) *Slope stabilization;*
 - (4) *Phased grading;*
 - (5) *Revegetation as early as feasible;*
 - (6) *Preservation of natural hydrologic features;*
 - (7) *Preservation of riparian buffers and corridors;*
 - (8) *Maintenance of all source control and treatment control BMPs; and*
 - (9) *Retention and proper management of sediment and other construction pollutants on site.*
 - b) *Each Permittee shall implement, or require the implementation of, the designated minimum BMPs at each construction site within its jurisdiction year round. If a particular minimum BMP is infeasible at any specific site, each Permittee shall implement, or require the implementation of, other equivalent BMPs. Each Permittee shall also implement or require any additional site specific BMPs as necessary to comply with this Order, including BMPs which are more stringent than those required under the General Construction Permit.*
 - c) *Each Permittee shall implement, or require the implementation of, BMPs year round; however, BMP implementation requirements can vary based on wet and dry seasons.*
 - d) *Each Permittee shall implement, or require implementation of, additional controls for construction sites tributary to CWA section 303(d) water bodies impaired for sediment as necessary to comply with this Order. Each Permittee shall implement, or require implementation of, additional controls for construction sites within or adjacent to or discharging directly to receiving waters within ESAs as necessary to comply with this Order.*

Comment: Nearly all of these requirements are beyond the mandate of the General Construction Activities Stormwater Permit (GCASP) and are extremely burdensome and overly vague, so as to create an extreme hardship to the building and construction industries. This is due to the impact on the ability to provide housing and also the loss of jobs that will occur, especially by enforcing the "minimize" grading component which **requires all Permittees to ensure that seasonal restrictions on grading occur at all construction sites**

(Section G.5.a.2). This requirement, and in fact many aspects of this Permit seek to override all operative provisions of the GCASP, forcing enforcement responsibility for compliance onto the municipal permittees. Rather than following the USEPA guidance anticipating coordination of the state-administered programs, this Permit does not seek to "coordinate" with the GCASP, but rather alters its most fundamental provisions and requirements. The result is inconsistent standards in this region from the rest of the state. Inconsistent standards result in uncertainty in implementation, enforcement, and regulated community understanding of its obligations from one site to the next. While the provisions of this Permit state that its provisions should be enforced along with those of the GCASP, such duplicative and inconsistent regulation is contrary to the provisions of the GCASP itself, which, as a State Board Order, will control. Specifically, the GCASP provides:

"RWQCBs shall: . . . [¶] . . . b. Issue permits as they deem appropriate to individual dischargers, categories of dischargers, or dischargers in a geographic area. *Upon issuance of such permits by a RWQCB, the affected dischargers shall no longer be regulated by this General Permit.*" (SWRCB WQ Order No. 99-08-DWQ, p. 7, ¶ D.1.b.)

By adopting this Permit, this Regional Board is issuing a permit they appear to deem appropriate both for a "category of dischargers" as well as "dischargers in a geographic area." Accordingly, by the express terms of the GCASP, adoption of the Permit in this regard will automatically nullify the responsibility of regulated entities to comply with the GCASP. This is an outcome we believe this Regional Board did not intend; nor is it an outcome we believe is appropriate.

But whether intended or not, this will be the effect of adoption of the Permit as written. (Below, we address the specific ways in which the Permit's "Development Construction Program" departs from the GCASP.) By superceding the GCASP for this region through the MS4 permit, the Regional Board abandons what has been a well-functioning, statewide system of uniform requirements, implementation, and – *usually* – enforcement. We do not believe the State Board will be anxious to abandon this system and accept differing implementation and enforcement standards, region by region. There is no evidence in the record that the Santa Margarita watershed has such unique circumstances that a region-wide abandonment of the GCASP is appropriate. If this Regional Board feels that the GCASP is deficient generally, then the appropriate course of action is to seek amendment of the GCASP by the State Board, not abandon the GCASP without just cause or an adequate evidentiary foundation.

How will this be enforced anyway? Besides, there is no justification for an arbitrary, blanket prohibition of this sort under any circumstances. Although there may be a higher potential of sediment runoff from grading construction sites during the rainy season, it should not be assumed that these sites would automatically result in water quality violations. These sites

should require the implementation of BMPs necessary to keep sediments on site, but should not be restricted from grading during the rainy season. If grading were disallowed during the rainy season, it would have a major impact to the building and construction industries. Not only would this cause many workers to be without employment during the rainy season, it would cause projects to take substantially longer to complete, thus increasing the cost of the project and the ultimate cost to the consumer. This would have the effect of putting more people out of reach of the American Dream, home ownership.

10. **Section K.2** states the following:

Each Permittee shall collaborate with all other Permittees to develop and implement a Watershed SWMP for the Upper Santa Margarita Watershed. The Watershed SWMP shall, at a minimum, contain the following:

Comment: As we have discussed throughout this comment letter, there are many benefits to using multi-use watershed treatment facilities, as opposed to on-site treatment. It is also possible in many situations to still comply with the Federal regulations at 40 CFR 131.10(a) which state that in no case shall a state adopt waste transport or waste assimilation as a designated use for any waters of the U.S. There may be many instances that regional watershed solutions can be constructed to treat stormwater runoff prior to its discharge into waters of the U.S., thus complying with the waste transport restriction. Therefore, we recommend that the regional board add two additional requirements to the Watershed WQMP. These two requirements are as follows; 1) an identification and prioritization of potential multi-use watershed treatment facility locations, designs and funding; and 2) an implementation time schedule of multi-use watershed treatment facilities which can be used to address the highest priority water quality problems.

GENERAL ISSUES

1. **The Clean Water Act's receiving water quality based provisions do not apply to public storm drain permits, are inconsistent with the practicability standard for public storm drain permits, and are likely to be unattainable.**

Public storm drain permits are issued under the authority of Section 402(p) of the federal Clean Water Act. Section 402 of the federal Clean Water Act establishes the National Pollutant Discharge Elimination System ("NPDES") permitting program. Public storm drain permits—also called MS4 or municipal separate storm sewer system permits—are a kind of NPDES permit.

The general rule is that NPDES permits must contain effluent limits "necessary to meet water quality standards." This requirement is contained in Section 301(b)(1)(C) of the Clean Water

“Cause and contribute” provisions and WLA’s are not based on notions of practicability. It is not known whether water quality objectives can be met during wet weather with “appropriate control measures.” It is anyone’s guess as to what level of water quality can practicably be achieved in the public storm drain. Until that knowledge is obtained, it is irresponsible to include WQBELs that may be unattainable.

2. **The Regional Board has no independent basis to include water quality based limits in a public storm drain permit.**

The Fact Sheet refers to three sources of authority for permit requirements “more stringent than the federal storm water regulations.” These are: (1) the Regional Board’s interpretation of the requisite practicability standard of Section 402(p); (2) Section 402(p)(3)(iii) of the federal Clean Water Act; and (3) Section 13377 of the California Water Code. The Regional Board does not explicitly identify a single permit provision that is in fact more stringent than federal law. To the extent there are such provisions in the permit, the Regional Board needs to identify those aspects, so that the regulated community can understand the authority under which it is being regulated. To the extent the Regional Board is hoping to rely on one of these three sources of authority to justify the permit’s water quality based provisions, such reliance is misplaced.

a. **The Regional Board’s interpretation of the practicability standard.**

The practicability standard of Section 402(p) is called the Maximum Extent Practicable, or MEP, standard. While it is true that MEP is a flexible, and continually evolving, standard, the Regional Board is not free to read the word “practicable” out of MEP. Nor does MEP give permitting agencies the authority to impose unattainable or infeasible requirements.

In this instance, the agency simply does not know whether it is practicable or feasible to require the public storm drain to comply strictly with water quality standards. A feasibility or attainability study evaluating what it would take in terms of infrastructure and engineering commitments to achieve the standards has not been conducted. Would treatment works for stormwater be required? Without substantial evidence that it is practicable to meet the standards, the agency cannot by edict declare it to be so.

b. **Section 402(p)(3)(iii) of the Clean Water Act.**

Section 402(p)(3)(iii) of the Clean Water Act allows permitting authorities to include in MS4 permits “such other provisions as the Administrator or the State determines appropriate.” The Regional Board may believe this provision provides a federal law exception to MEP. It does not. It simply refers to one category of controls governed by the “extent practicable” standard. This can be seen from the structure of Section 402(p)(3)(iii) which states that:

Permits for discharges from municipal storm sewers . . . shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions appropriate for the control of such pollutants.¹⁷

Parsing this provision indicates that the “other provisions” language is qualified by the MEP standard, just as are “management practices,” “control techniques,” and “engineering methods.” While Section 402(p)(3)(iii) may be somewhat awkward in construction, there is no indication that Congress intended to nullify the MEP standard by the “other provisions” term.

c. **California Water Code Section 13377.**

The permit at issue is not only an NPDES permit but is also a set of Waste Discharge Requirements (“WDRs”) which the Regional Board is authorized to issue under California’s Porter Cologne Water Quality Control Act. Chapter 5.5 of the Porter Cologne Act pertains to WDRs that also are NPDES permits. The Fact Sheet refers to Section 13377 of the Porter Cologne Act, which appears in Chapter 5.5. Section 13377 states in pertinent part:

Notwithstanding any other provision of this division, the state board or the regional boards shall, as required or authorized by the Federal Water Pollution Control Act [CWA], issue waste discharge requirements . . . and ensure compliance with all applicable provisions of the act . . . together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance.

At first blush, this provision appears to require all WDRs issued by the Regional Board to include strict compliance with water quality standards. The problem with this logic is that Section 13377—in fact all of Chapter 5.5—applies only to actions required by the federal Clean Water Act. This important limitation is contained in Section 13372 of Chapter 5.5, which states in pertinent part:

The provisions of this chapter shall apply only to actions required under the Federal Water Pollution Control Act [the Clean Water Act] and acts amendatory thereof or supplementary thereto.

¹⁷ 33 U.S.C. § 1342(p)(3)(B)(iii).

The issue of whether Chapter 5.5 applies broadly to WDRs was addressed in Committee for a Progressive Gilroy v. State Water Res. Control Bd., 192 Cal. App. 3d 847 (1987). At issue in that case was another seemingly broad provision of Chapter 5.5, this one seemingly exempting WDRs from CEQA. In reliance on the limitation contained in Section 13372, the court limited the CEQA exemption to only those actions required by the federal Clean Water Act.

Clearly, Chapter 5.5 is simply intended to enable the Regional Board to implement federal law. Since strict compliance in MS4 permits with water quality standards is not required by the Clean Water Act, the Regional Board cannot bootstrap such a provision into the permit by pointing to Section 13377 of Chapter 5.5.

3. **State Board decisions predating the Browner case provide no basis for including water quality-based limits in a public storm drain permit.**

The federal appellate case that discussed the standard applicable to MS4 permits (Defenders of Wildlife v. Browner), was decided in September 1999 by the Ninth Circuit federal appellate court. As the State Board recently acknowledged, the Ninth Circuit is the "federal circuit court that controls the interpretation of the Clean Water Act in California."¹⁸ The Court overturned prior U.S. EPA policy by which EPA was directing the states, including California, to include WQBELs and strict compliance provisions in MS4 permits. In response to EPA's direction on this issue, the State Board prior to September 1999 had issued several decisions holding that such provisions were required.¹⁹ Since the Ninth Circuit issued its Browner decision, the State Board has not had occasion to revisit this issue.

The Regional Board is an agency independent of the State Board. It is entitled to presume that the State Board, like the Regional Board, will conform its practices to the Ninth Circuit's Browner ruling. Importantly, the State Board's prior decisions were based on the U.S. EPA's interpretation of Section 402(p) that was overturned in Browner. The law as it exists today is that WQBELs, such as "cause and contribute" provisions and WLAs, are not required in

¹⁸ See, In the Matter of the Petition of the Department of Boating and Waterways, SWRCB/OCC File A-1338, Draft Order WQ 2001-.

¹⁹ In State Board Order WQ 98-01, the State Board found that MS4 permits "must include limitations necessary to achieve water quality standards," and that permittees must "control discharges that contribute to exceedances of water quality objectives." State Board Order WQ 98-01, § II, Finding I. The State Board also ordered that certain receiving water limitation language be included in future MS4 permits. U.S. EPA later issued the permits that were the subject of State Board Order WQ 98-01 and included different receiving water limitation language. By Order WQ 99-05, the State Board mandated that the revised language be included in future MS4 permits. Among other provisions, the specified language states:

The permittees shall comply with Discharge Prohibitions [] and Receiving Water Limitations [] The SWMP shall be designed to achieve compliance with Receiving Water Limitations
State Board Order WQ 99-05.

MS4 permits. Since the Regional Board has no other legitimate basis for including them in this permit, they should be removed.

4. **The permit may in effect subject stormwater discharges, at least to impaired waters, to numeric limits, in conflict with case law and prior agency rulings.**

The "cause and contribute" provision of the permit in effect may impose end-of-the-pipe numerical effluent limits on stormwater. We are concerned that others may argue that stormwater discharges containing concentrations exceeding the numeric water quality objectives of the Basin Plan and the California Toxics Rule violate the permit's "cause and contribute" provision. This would be tantamount to the imposition of numeric effluent limits.

Numerical limits on stormwater have been deemed infeasible by U.S. EPA and the SWRCB. For stormwater discharges from public storm drains, EPA has found that numeric limits are infeasible given the significant complication and variability of stormwaters. Given that the "currently availability methodology for derivation of numeric water quality-based effluent limitations is significantly complicated when applied to wet weather discharges from MS4s," "EPA considers narrative [as opposed to numeric] effluent limitations requiring implementation of BMPs to be the most appropriate form of effluent limitations for MS4s."²⁰

The SWRCB has held consistently that numeric limits for stormwater discharges are infeasible. The SWRCB recently explained this position to the court in the Keeper groups' challenge to the Construction Permit. The court agreed with the SWRCB, holding that the SWRCB had:

a substantial factual basis for concluding that numeric effluent limitations on pollutants in storm water discharges from construction sites are not feasible. Given the regulatory and case law permitting narrative effluent limitations in the form of BMPs when numeric limitations are infeasible, the [SWRCB] can properly require BMPs instead of numeric limitations.²¹

²⁰ NPDES Phase II Storm Water Rules, 64 Fed. Reg. at 68753; see also Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits, 61 Fed. Reg. 43761 (Aug. 26, 1996); Questions and Answers Regarding Implementation of an Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits, 61 Fed. Reg. 57425, 57426-27 (Nov. 6, 1996).

²¹ San Francisco Baykeeper v. California State Water Res. Control Bd., No. 99CS01929, Ruling on Submitted Matter (Sac. Sup. Ct. July 27, 2000) at 7. See also Waste Discharge Req. for City of Santa Rosa, Laguna Subreg. Wastewater Treatment, Reuse, and Disposal Fac., SWRCB WQ Order No. 2000-02 (March 3, 2000) (finding "it is not feasible at this time to establish numerical storm water effluent limits for that facilities which are not covered in 40 CFR Subchapter N [non-industrial facilities]."); Natural Res. Defense Council, SWRCB Order WQ 91-04, at *20 (May 16, 1991), 1991 Cal. ENV LEXIS 14 ("There are no numeric objectives or numeric effluent limits required at this time, either in the Basin Plan or in any statewide plan that apply to storm water discharges.").

5. **The permit relies on water quality objectives that may not be relevant to stormwater and may not reflect applicable statutory factors or reasonably achievable water quality.**

The permit incorporates and relies upon the water quality objectives from the Basin Plan.²² The Regional Board provides no evidence that the relevant factors—economics, housing need, and wet weather—were considered. Under Section 13263 of the Water Code, the Regional Board is required to consider all of the factors enumerated in Section 13241 when issuing an MS4 permit. Cal. Water Code § 13263(a). Under Section 13241, the Regional Board is authorized to issue waste discharge requirements designed to achieve “[w]ater quality conditions that *could reasonably be achieved* through the coordinated control of all factors which affect water quality in the area.”²³

The permit should not rely on flawed water quality objectives, and certainly should not require strict compliance with such objectives. The Basin Plan’s water quality objectives must be revised to appropriately reflect wet weather conditions, land use patterns, housing, and the economy.

6. **The permit, by requiring local authorities to implement certain land use controls, constrains their jurisdiction over local land use and planning matters, and essentially imposes a regional land use plan.**

Contravening both the Clean Water Act and California law, the permit attempts to regulate activities inextricably bound to local land use authority. Permittees are required to amend their General Plan and development-approval processes and procedures.

The Clean Water Act recognizes the rights and responsibilities of the states over development and land use. The permit’s encroachments upon local land uses and land use authority are inconsistent with the Clean Water Act, since the encroachments do not protect and preserve local government’s traditional sphere of influence.²⁴ California courts have recognized that “the front line role in land use planning and zoning is in the hands of the local government,”²⁵ as opposed to state government or executive agencies thereof. “[T]he state land use planning and zoning law ‘leaves wide discretion to a local government not only to determine the contents of its land use plan, but to choose how to implement these plans.’”²⁶ Through the permit, the Regional Board is attempting improperly to remove this discretion, which is required to be left to the local authorities. Those permit provisions that

²² Permit § E.13 and § Part 2.1

²³ Cal. Water Code § 13241(c) (emphasis added).

²⁴ Section 101 of the Clean Water Act states that “It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of the States ... to plan the development and use ... of land.” 33 U.S.C. § 1251(b).

²⁵ Building Indus. Assoc. of San Diego v. Superior Ct. of San Diego County, 211 Cal. App. 3d 277, 291 (1989).

²⁶ Id. at 296 n.12 (quoting Yost v. Thomas, 36 Cal. 3d 561, 565 (1984)).

improperly regulate activities within the purview of local governments should be removed or revised from the permit.

CONCLUSION

We are very concerned about the cost effectiveness of the Permit in relation to specifically, what the anticipated efficacy is of this Permit in terms of improving overall water quality. The Permit should provide actual improvement of water quality, not simply attempts at incremental decreases in future contributions.

As to the maximum extent practicable consideration, both the Regional and State Boards have not properly addressed key elements of the "practicality" component – i.e., technical and cost feasibility. While cleaning up a problem decades in the making certainly must be a priority, it will not be accomplished on the back of other critical social needs in California, such as housing and jobs. Even with the marginal cost estimates relied upon by Regional Board staff (figures we vigorously dispute), there is no consideration as to the effect of those marginal costs on jobs and the availability of housing for those most in need.

In consideration of the aforementioned comments and recommendations, CICWQ respectfully requests that the Board give further review to the proposed Permit and make modifications that will result in a more equitable and balanced approach for addressing our collective regional water quality needs. CICWQ would be pleased to discuss these issues in greater detail at any time and assist Board staff with making any of the recommended modifications.

CICWQ recognizes that the stakes are very high with regard to the development of a permit that the Board believes will improve water quality. The coalition also recognizes that there are a number of stakeholders involved in the process – all of which have specific concerns they want to have addressed. Yet, the most important thing to keep in mind is that this permit is not just about water quality. It is also about housing, jobs and economic growth. The absence of any meaningful consideration of these issues, in an effort to improve water quality at any cost, will have an immediate and significant impact on affordable housing, jobs, wages and livability. Meanwhile, there would be little, if any, certainty as to just how much water quality improvement would really be achieved.

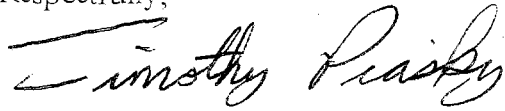
We urge you to thoroughly review the comments provided by CICWQ and ask yourselves at what point water quality improvement efforts should be allowed to compromise the economic livelihoods of our working families, diminish new home production, increase housing costs, and jeopardize our regional economic strength.

We are confident that, by working together, CICWQ can assist you in achieving balance that will greatly improve water quality while also meeting our other regional obligations and needs. We thank you for your consideration of our comments.

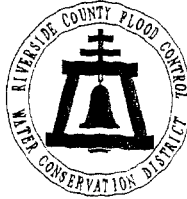
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If you have any questions, please feel free to contact me at (909) 396-9993 or tpiasky@biasc.org.

Respectfully,

A handwritten signature in black ink, reading "Timothy Piasky". The signature is written in a cursive, flowing style with a large initial 'T'.

Timothy Piasky
Director of Environmental Affairs



RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

January 28, 2004

Mr. John Robertus Executive Officer
California Regional Water Quality
Control Board - San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123

Dear Mr. Robertus:

Re: Tentative Order No. R9-2004-001
NPDES No. CAS0108766

The Riverside County Flood Control and Water Conservation District (District) is the Principal Permittee of the Riverside County Municipal Separate Storm Sewer System (MS4) Permit for the Santa Margarita Region. In cooperation with the Co-Permittees, the District has initiated a review of Tentative Order No. R9-2004-001, NPDES No. CAS0108766 (Tentative Order), Monitoring and Reporting Program (MRP Program) and the Fact Sheet. However, the changes to the MS4 Permit requirements proposed in the Tentative Order are extensive, and the corresponding compliance programs and the resource requirements needed to implement these programs are significant. Therefore, we are only able to submit initial comments at this time. Further, the 72-page Fact Sheet that provides the rationale for the proposed new and expanded requirements will require additional time and effort to review and evaluate. It is apparent that there are several factual errors in this sheet, including under-representation of Permittee Monitoring Costs and factual misrepresentations regarding industrial and commercial facilities that the Permittees currently inspect or propose to inspect.

Although the Permittees intend to present additional comments at the Regional Board hearing on February 11th and additional written comments by February 18th, the hearing schedule has not provided adequate time to prepare complete comments regarding the Fact Sheet and the Tentative Order. In addition, the hearing schedule has not provided adequate time to prepare, calendar and present staff reports on the Tentative Order to our elected officials. To provide adequate time for this important element of the public review and comment process, the Permittees request a second public review period and hearing following release of staff responses to the initial Permittee comments. Additional review time is needed to facilitate the development of an MS4 Permit that most efficiently promotes our goal of protecting water resources in the context of maintaining the ability of the County, Cities and District to provide other needed municipal services. This is especially critical at this time given the funding crises shared by the State and local governments. The County of Riverside alone is facing a \$115 million shortfall next fiscal year due to the State budget crisis. At a time when local governments are cutting police and fire services, the Permittees find it difficult to support a significant expenditure on the expansion of an effective water quality management program in a watershed where there are no significant water quality problems or threats to public health and safety.

With the intervening holidays, the December 15, 2003 release date effectively provided the Permittees only four weeks to review these documents. This is inadequate time to review the

documents, evaluate their impact and inform management, elected officials and our community. The challenge of conducting the review has been compounded by the compliance requirements in the Colorado and Santa Ana Region MS4 Permits. During the review period Program staff were required to complete and submit an Annual Report for the Colorado Region MS4 Permit and continue to make progress in developing and implementing compliance programs. This includes the initial development of the WQMP, preparation of budgeting information for the Santa Ana Permittees, and preparation of significant comments on the Model Stormwater Monitoring Program for Municipal Urban Runoff Programs prepared by the Stormwater Monitoring Coalition. The District and Permittee staff commenting on this Tentative Order were also required to keep up with several committee and sub-committee meetings required by the various permits. All of this is in addition to continuing to implement the ongoing compliance programs.

During the last 14 years the Permittees and Regional Board have worked together to manage urban runoff quality in the permitted area. These efforts have resulted in the following accomplishments:

- Development of the Drainage Area Management Plan (DAMP) and Supporting Documents (Supplement A—New Development Guidelines, Enforcement Compliance Strategy and Municipal Facilities Strategy)
- Inspection of the storm drain system for illicit and illegal discharges
- Implementation of programs to control illicit and illegal discharges
- Implementation of public education program
- Implementation of Compliance/Assistance Program for industrial and commercial facilities
- Implementation of the Riverside County Consolidated Program for Water Quality Monitoring
- Participation in cooperative regional monitoring programs through the Southern California Monitoring Coalition in collaboration with Regions 4,8 and 9, Southern California Coastal Research Project and 6 other Southern California Phase 1 Municipal Programs

The existing urban runoff quality management program outlined in the DAMP and the Supporting Documents is effective and appropriate given the limited nature and significance of water quality problems associated with runoff from urban development in the Santa Margarita Region and only limited modifications to the DAMP are justified. These modifications were outlined in the Report of Waste Discharge submitted to the Regional Board in May 2003.

Although the Permittees and Regional Board have worked in a fiscally constrained environment with limited resources, this program has been notable in its effectiveness in managing runoff from urban areas in the Santa Margarita Region to protect receiving waters. Evidence of this effectiveness is that the single water quality impairment in the Santa Margarita Region identified by the Regional Board in the 2002 California 303(d) List and TMDL Priority Schedule is for phosphorous. However, even background conditions unaffected by urban or agricultural development exceed the Basin Plan objective for phosphorous. Given the effectiveness of the existing program and other local, State and Federal source control programs implemented in the Santa Margarita Region, no future water quality impairments associated with runoff from urban development are expected in the Santa Margarita Region.

Mr. John Robertus Executive Officer
California Regional Water Quality
Control Board – San Diego Region
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It should be noted that, although this area has experienced significant growth over the past several years, the current population of approximately 168,000 is just over half of the ultimate build-out estimate for the watershed. Less than 20% of the Santa Margarita Region will ultimately be urbanization under the County's General Plan, and ultimate build-out may substantially be achieved within the next several years. It should be noted that the Regional Board and USEPA Region IX, in adopting the existing MS4 Permit for the Santa Margarita Region, indicated that the existing program complies with the requirements of the Clean Water Act.

In reviewing the Tentative Order, we are asking the same questions that we expect the Board of Supervisors, City Councils and the citizens to ask as authorization and funding for implementation of the proposed new and expanded programs is requested, including:

- What are the problems associated with runoff from urban development in the Santa Margarita Region to be addressed by the new and expanded compliance requirements proposed in the Tentative Order?
- What existing programs address these problems?
- Are existing programs to manage runoff from urban developments in the Santa Margarita Region effective? If these existing programs are not effective, what specifically needs to be done to improve their effectiveness?
- What new and expanded programs to control urban runoff quality are being proposed in the Tentative Order and why are they needed?
- Will the new and expanded programs proposed in the Tentative Order solve or even affect the water quality problems associated with runoff from urban development in the Santa Margarita Region?
- How will these new and expanded programs to control runoff from urban development in the Santa Margarita Region be funded (federal/state funding, permits/fees, special assessments, general fund)? Will the demands of new and expanded compliance requirements impact the resources needed to maintain local services and facilities?
- What is the schedule for implementing the proposed compliance requirements? Are the Permittee procedural constraints recognized in the schedule? Are existing funding, staffing and other resources sufficient to meet the compliance schedules? If not, are the processes needed to obtain additional resources factored into the schedules? How does the proposed schedule tie into other efforts in the watershed, i.e., the Triennial Review, TMDL studies, etc.?
- How will we know if the proposed compliance requirements have addressed the identified problem(s), if any, associated with runoff from urban developments in the Santa Margarita Watershed? Who will measure our progress and make such a determination?

Mr. John Robertus Executive Officer
California Regional Water Quality
Control Board – San Diego Region
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More specific concerns regarding the Tentative Order include the lack of evidence to support several of the findings in the Tentative Order, the lack of a cost/benefit analysis regarding the Tentative Order consistent with prudent public policy, the Tentative Order's inspection components, compliance schedule, compliance with and conditions relating to the California Environmental Quality Act (CEQA), and other related concerns. Each of these concerns is set forth more fully in the following position papers that are attached and incorporated by reference into this comment letter:

- Vested Tract Rights
- Santa Margarita Region MS4 Compliance Schedule
- Need for Revision to Monitoring Program
- Watershed Management - Definition of Urban Runoff
- Commercial/Industrial Inspections and Minimum Best Management Practices
- Free and Open Access
- Procedure to Address Non-Jurisdictional Discharges.
- Runoff From Urban Development is Not a Significant Source of Impairment
- The Tentative Order Should Contain a Cost/Benefit Analysis
- The Regional Board Must to Comply with CEQA
- Construction Databases
- The Tentative Order Imposes Unfunded State Mandates

Since the inception of the municipal stormwater program 14 years ago, the Riverside County Permittees have been proactive in working with Regional Board staff to develop workable MS4 Permit requirements and in implementing effective programs to manage runoff from urban developments in the Santa Margarita Region. These continue to be our objectives. As described in the attached comments, based on our initial review the Tentative Order is neither workable nor is it applicable to the conditions in the Santa Margarita Region.

In preparing the Report of Waste Discharge submitted to the Regional Board, the Permittees:

- Evaluated the contributions of runoff from urban development to identified receiving water quality problems in the Santa Margarita Region and assessed the potential for future contributions.
- Reviewed the Riverside County DAMP to assess those elements that are working and identified modifications needed to address water quality impairments associated with runoff from urban development in the Santa Margarita Region.
- Developed implementation schedules that recognized the realities of municipal procedures, budgetary processes, and funding limitations.

The Permittees request that at minimum, a second Regional Board hearing be conducted in the Santa Margarita Region of Riverside County. The purpose of this hearing, which should be held prior to the Permit adoption meeting, would be to review a revised Tentative Order and to provide the local community that is directly affected by the Tentative Order an opportunity to more directly participate

Mr. John Robertus Executive Officer
California Regional Water Quality
Control Board – San Diego Region
Re: Tentative Order No. R9-2004-001
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January 28, 2004

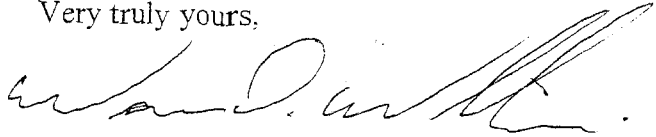
in the permit adoption process. It is critical that the local community, including the local elected representatives, be given ample opportunity to comment, since they will be significantly affected by the cost of the compliance requirements proposed in the Tentative Order.

Conclusion

The Permittees are submitting these initial comments as part of the on-going, open dialogue with the Regional Board to help develop an appropriate, effective and workable MS4 Permit for the Santa Margarita Region. The Permittees are committed to water quality protection in a manner that balances this objective with the universe of needs and expectations of the citizens of California within the Santa Margarita Region. We look forward to discussing the initial concerns of the Permittees and our proposal to work collaboratively to resolve these concerns at the February 11, 2004 hearing.

If you have any questions regarding these initial comments, please contact me at 909.955.1250 or Jason Uhley at 909.955.1273.

Very truly yours,



WARREN D. WILLIAMS
General Manager-Chief Engineer

Attachments: Position Papers
Newspaper Article

c: Barbara Dunmore, County Executive Office
Steve Mandoki, City of Murrieta
Shawn Nelson, City of Temecula
Alex Gann, County Executive Office
Aldo Licitra, City of Temecula
Bob Moehling, City of Murrieta
Steve Stump
Jason Uhley
Tina Tuason
Bob Morris, CRWQCB - San Diego Region

Mr. John Robertus Executive Officer
California Regional Water Quality
Control Board - San Diego Region
Re: Tentative Order No. R9-2004-001
NPDES No. CAS0108766

- 6 -

January 27, 2004

SIGNATURES OF CO-PERMITTEES

THE CITY OF TEMECULA JOINS IN THE COMMENTS SET FORTH IN THIS LETTER.

SIGNATURE



PRINTED NAME:

WILLIAM G. HUGHES

DIRECTOR OF PUBLIC WORKS / CITY ENGINEER

DATED:

1-28-04

Mr. John Robertus Executive Officer
California Regional Water Quality
Control Board - San Diego Region
Re: Tentative Order No. R9-2004-001
NPDES No. CAS0108766

January 28, 2004

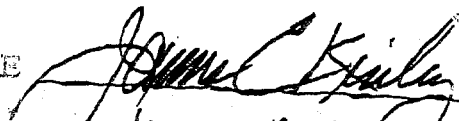
SIGNATURES OF CO-PERMITTEES

THE CITY OF MURRIETA JOINS IN THE COMMENTS SET FORTH IN THIS LETTER.

SIGNATURE

PRINTED NAME:

DATED:


James E. Kiley, Director of Public Works
Jan 28, 2004

Mr. John Robertus Executive Officer
California Regional Water Quality
Control Board – San Diego Region
Re: Tentative Order No. R9-2004-001
NPDES No. CAS0108766

- 8 -

January 27, 2004

SIGNATURES OF CO-PERMITTEES

THE COUNTY OF RIVERSIDE JOINS IN THE COMMENTS SET FORTH IN THIS LETTER.

SIGNATURE Barbara Dunmore

PRINTED NAME: Barbara Dunmore

DATED: January 27, 2004

TUESDAY, JANUARY 27, 2004

THE PRESS-ENTERPRISE

LOCAL

Budget will take a \$145 million hit

BY MICHAEL CORONADO
THE PRESS-ENTERPRISE

Supervisors today will get a grim financial picture of the county's current and future budget.

The mid-year budget report outlines millions in losses from state revenue and burgeoning shortfalls from the county's hospital that will continue this year and next.

County departments are expected to bear a substantial portion of the estimated \$145 million in losses and increasing costs of doing business for the remaining year and into next.

For the 2003-04 budget, those revenue losses come from a va-

COUNTY COUNCIL

2003-04 budget shortfalls:
\$30 million

2004-05 budget shortfalls:
\$115 million

riety of sources, including the vehicle license fee backlog and hospital losses.

The county hospital is also an estimated \$12 million to \$16 million in the hole for this year and is expected to face the same losses in 2004-05.

The county's overall budget for 2003-04 is approximately \$1.4 billion. For 2004-05, the budget is approximately \$1.5 billion. Revenue losses come from a va-

BUDGET

CONTINUED FROM B1

\$3 billion, with a discretionary general fund of \$423 million.

For 2004-05, the tens of millions in lost revenue will result from property tax shifts, increasing expenses to run the county's programs and departments and estimated hospital losses.

To shore up some of that lost revenue, all county department heads will be asked to cut spending by an estimated 8 percent.

How those managers handle those cuts — through layoffs, furloughs or tighter budgets — will result in an estimated \$26 million in savings.

Those savings are expected to make up \$26 million in property taxes that the county

would have received from the state that will instead be shifted to schools in order to help balance the state budget.

"It's not going to get any better any sooner," said Ed Corser, the county's finance director from his office on Monday.

It is probable the cost-saving measures will have a significant impact on public services, including public safety, Corser said.

In addition, Larry Parrish, the county's executive officer, outlined an immediate hiring freeze for positions paid for by general fund dollars across all departments in the county's mid-year budget report.

It's still not certain how the hiring freeze will affect, if at all, the hiring of new deputies and

nurses.

Though the county's budget for 2004-05 is yet to be drafted, things like cost-of-living raises for public safety personnel and improved staffing levels at fire stations will cost more than \$31 million in extra expenses to the county's general fund.

"This is going to be a tough year," Corser said. "We'll outgrow this in the next couple of years."

One-time revenues, such as tobacco settlement money, developer fees previously collected from construction projects and reserves, will help bridge the remaining losses but won't be available for next year.

"That means we'll be scrambling for that money again," Corser said.

VESTED TRACT RIGHTS

The Tentative Order Is Subject To Restraints Imposed By The Legal Doctrines of Vested Rights And Estoppel In The Context Of Private Property Development

The California Supreme Court in Avco Community Developers, Inc. v. South Coast Regional Com., 17 Cal. 3d 785, 793, 132 Cal Rptr. 386 (1976) held that where a private property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he acquires a vested right to complete construction of the development in accordance with the terms of the permit. Once a landowner has secured a vested right, the government may not, by virtue of a change in the land use laws, prohibit construction authorized by the permit upon which he relied. A common scenario involving vested rights takes place where the conditions attached to a tentative map have been satisfied by a subdivider and then the local legislative body is required to approve a final subdivision map. For example, in a case involving the Subdivision Map Act (Government Code §§ 66410 et seq.), the California Supreme Court held that once all discretionary approvals are obtained then the project is subject to vesting despite the need to obtain ministerial approvals. See Youngblood v. Board of Supervisors, 22 Cal. 3d 644, 653-657, 150 Cal. Rptr. 242 (1978). Similar reasoning applied to a phased project involving a special use permit in Toigo v. Town of Ross, 70 Cal. App. 4th 309, 82 Cal. Rptr 2d 649 (1999). A vested right has been found on the part of a scrap recycler where he was allowed to continue a nonconforming use of improvements already constructed pursuant permits issued by the city, Halaco Engineering Co. v. South Central Coast Regional Com., 42 Cal. 3d 52, 207 Cal. Rptr. 672 (1986).

Another area in which vested property rights arise is based on contract. Both the United States and California constitutions contain provisions that bar state and local governments from passing any law impairing the obligation of contracts. Such laws come within the classification of invalid retrospective legislation. See United States Constitution, Article I, § 10, Clause 1 and California Constitution, Article I, § 16.

Examples of such contracts in the land use context include: annexation agreements, bonded indebtedness, development agreements, subdivision improvement agreements, mineral leases and landlord/tenant leases. See Monterey Sand Co. v. Coastal Comm'n, 191 Cal. App. 3d 169, 236 Cal. Rptr. 315 (1987); Ross v. City of Berkeley, 655 F. Supp. 820, 827 (N.D. Cal. 1987); Morrison Homes Corp. v. City of Pleasanton, 58 Cal. App. 3d 724, 130 Cal. Rptr. 196 (1976); Trimont Land Co. v. Truckee Sanitary Dist., 145 Cal. App. 3d 330, 193 Cal. Rptr. 568 (1983).

In addition, certain contracts referenced above are subject to additional statutory requirements and protections. Cities and counties are authorized to enter into binding development agreements with property owners for the development of private property (Government Code §§ 65864-65869.5). Such agreements provide a specific form of vested right where the agreements can supersede any change in planning, zoning, subdivision or building regulations adopted after the execution of the particular agreements. See Government Code § 65865.4. Moreover, regulations governing

permitted uses of the land, density design, improvement, and construction standards and specifications, applicable to development of the property subject to a development agreement, are the regulations in force at the time of execution of the agreement. See Government Code §§ 65866. Development agreements have been judicially interpreted under a liberal construction to uphold their legal validity, Santa Margarita Area Residents Together v. San Luis Obispo County, 84 Cal. App. 4th 221, 100 Cal. Rptr. 2d 740 (2000).

Another example of contracts with statutory protections are subdivision improvement agreements entered into pursuant to the Subdivision Map Act (Government Code §§ 66410 et seq.). Such agreements address road, drainage, sewer and water infrastructure improvements, including layout and design (Government Code §§ 66462, 66499-66499.10). The Subdivision Map Act provides additional sources of vested right where a final map has been approved or where a vesting tentative map is involved. See City of West Hollywood v. Beverly Towers, Inc., 52 Cal. 3d 1184, 1192, 278 Cal. Rptr. 375 (1991); Bright Dev. v. City of Tracy, 20 Cal. App. 4th 783, 24 Cal. Rptr. 2d 618 (1993); and Government Code § 66498.1.

In a related area of the law, estoppel, the California Supreme Court has stated that the vested rights doctrine is grounded upon the principle of equitable estoppel which may be applied against the government where justice and fairness require it. An equitable estoppel requiring the government to exempt a land use from a subsequently imposed regulation must include (1) a promise such as that implied by a building permit that the proposed use will not be prohibited by a class of restrictions that includes the regulation in question; and (2) reasonable reliance on the promise by the property owner to his detriment. See Santa Monica Pines, Ltd., v. Rent Control Board, 35 Cal. 3d 858, 867, 201 Cal. Rptr. 593 (1984); Stanson v. San Diego Coast Regional Com., 101 Cal. App. 3d 38, 39, 161 Cal. Rptr. 392 (1980); and Wilson v. City of Laguna Beach, 6 Cal. App. 4th 543, 7 Cal. Rptr. 2d 848 (1992).

The Regional Board and the Permittees must take heed of the legal considerations discussed above to the extent that a conflict arises with the terms of Tentative Order No. R9-2004-001. Said order, in its current form, seeks to impose an extensive scheme of requirements upon a variety of land use areas consisting of: new development, redevelopment, construction activities, municipal activities and facilities, industrial facilities, commercial facilities and residential neighborhood activities.

SANTA MARGARITA REGION MS4 PERMIT COMPLIANCE SCHEDULE

The Tentative Order proposes requiring the Permittees to implement new and expanded compliance programs. Implementation requires five steps:

- 1) Review existing programs for compliance with the Tentative Order.
- 2) Revise or create compliance programs for areas that are found deficient.
- 3) Identify funding and staffing needs and sources.
- 4) Revise and adopt ordinances to require the implementation and enforcement of the additional and expanded compliance programs and ensure that violations of the ordinances can be enforced by sanctions.
- 5) Have city attorney/County Counsel certify that their respective local government agency has the authority to implement and enforce the compliance requirements.

The new and expanded compliance programs must be developed, implemented and codified within 365 days of adoption. Further, the Tentative Order requires city attorneys and County Counsel to certify that their ordinances include provisions for sanctions to enforce compliance programs mandated by the Order within 365 days of adoption. Grading ordinances must be revised within 180 days of adoption.

The Compliance Schedule Proposed in the ROWD is Protective of Receiving Waters

In the ROWD the Permittees committed to review their ordinances within 6 months of Permit adoption, and as necessary, revise these ordinances and certify legal authority within 18 months of Permit adoption. This schedule was based on the continued countywide implementation of programs developed in the Santa Ana Region and a reasonable use of Permittee resources. Justification was not provided to describe why the compliance programs and schedule proposed in the ROWD would not be protective of water quality and what benefits would be realized in the Santa Margarita Region by the compliance requirements and accelerated implementation schedule proposed in the Tentative Order. Lacking such justification, the Permittees cannot justify use of emergency procedures to meet the specified compliance schedule.

The Compliance Schedule Proposed in the Tentative Order Will Not Provide Additional Water Quality Benefits

No justification is presented to support the compliance schedule proposed in the Tentative Order or to justify why the schedule proposed in the ROWD is not protective of water quality in the Santa Margarita Region. The justification is not, and the Permittees maintain cannot, be based on a credible threat to water quality or public health and safety in the Santa Margarita Region.

The Compliance Schedule Proposed in the Tentative Order Fails to Consider Local Processes

Section E.2 of the Fact Sheet asserts that the implementation schedule proposed in the Tentative Order is practicable based on:

- Compliance with a one-year schedule by MS4 Permittees in San Diego and Orange Counties.
- Regional Board staff communications with Permittee staff.
- Available models that can be used as examples.
- The requirements are based on established regulatory requirements.

The Tentative Order reflects a lack of recognition to local differences in the procedural requirements associated with development and implementation of programs by the Permittees. The local schedule constraints were documented and presented to Regional Board staff by the Permittees prior to issuance of the Tentative Order. These procedural requirements and constraints provide for data gathering, program development, public involvement, Permittee budgetary processes, State procedural requirements for ordinance adoption, compliance with internal procedures and other practical considerations. In order to revise ordinances and certify legal authority within the prescribed timeframe, the ordinance revisions may require the implementation of emergency action processes that bypass public notice and comment procedures that are reserved for identified threats to public health and safety.

Permittee staff acknowledges that Regional Board staff have communicated their desires and expectations regarding the proposed requirements of the Tentative Order. However, Permittee staff cannot respond to Regional Board staff desires in the same manner as private sector organizations. Permittee staff, like Regional Board staff, cannot commit public resources to initiate changes in District, County or City policy and programs without approval from their respective Boards. Such approval requires clear justification based on specific requirements, i.e., adoption of Permit requirements. Further, in the dialogue with Regional Board staff the Permittee staff provided documentation that the existing program is effective and that the imposition of exceptionally stringent requirements developed for San Diego and Orange Counties is not warranted. Therefore, although the Regional Board and Permittee staffs were engaged in a dialogue, this did not provide additional "lead time" that would reduce the time needed for development of compliance programs.

The Permittees are aware of and have reviewed many models developed to address urban runoff management that can be considered in the development of compliance programs in the Santa Margarita Region, including those referenced by Regional Board staff. However, the Santa Margarita Region, like other areas covered by MS4 permits, is unique. Although models can be used as general guidance, the compliance program must be tailored to the unique water quality conditions and characteristics of the Santa Margarita Region. If this were not the case, a statewide, or even a nationwide permit and compliance program would be appropriate.

The Permittees agree that the regulatory requirements have not changed since issuance of the Phase I regulations in 1990. The existing compliance program, which is responsive to the MS4 permit issued by the San Diego RWQCB and USEPA Region IX, is in compliance with these regulatory requirements and is protective of water quality. As noted elsewhere in our comments, the compliance programs have been notably effective. Therefore, there is no justification for the imposition of new and expanded compliance requirements on such an accelerated schedule.

The Compliance Schedule Proposed in the Tentative Order Fails to Consider Cost Impacts

To determine the impact of the accelerated implementation schedule proposed in the Tentative Order, the Permittees have reviewed their administrative, technical and fiscal resources and existing compliance programs. These analyses have determined that the Permittees could not reasonably implement this program within the prescribed compliance schedule with available staff resources. To meet the compliance schedule the Permittees would be required to hire consultants and authorize overtime to assist in expediting development and implementation of the proposed compliance programs. Additionally, the schedules do not recognize that the Permittees will need to rely on the same staff resources to develop a number of expanded and new MS4 permit compliance programs simultaneously. This would significantly impact local resources that must also fund basic public services (fire, police, libraries, etc.). Further, during this period the District and County are also being required to develop and implement compliance programs responsive to MS4 permits issued in the Santa Ana and Colorado Regions, and the City of Murrieta must develop and implement compliance programs in the Santa Ana Region. Significant public resources could be saved without impacting water quality by revising the Tentative Order's implementation schedule.

Proposed Alternative Compliance Schedule

The accelerated compliance schedule is inappropriate, wasteful of public resources and unnecessary for water quality protection. The Permittees have proposed a revised compliance schedule based on the requirements in the Tentative Order and the Permittees' fiscal and administrative analysis of internal procedures. The proposed implementation schedule would:

- With exception of the SUSMP, develop the required programs within 365 days of permit adoption. Compliance programs that do not require ordinance revision would be implemented within the 365-day period.
- Produce the Individual and Watershed SWMP documents, including the SUSMP, within 640 days of the Tentative Order adoption.
- Certify legal authority and implement remaining programs within 640 days of Tentative Order adoption.

The Permittees believe that the proposed implementation schedule is reasonable, is protective of water quality, and responsibly uses fiscal and administrative resources. It also allows for deliberate development of compliance programs and opportunities for public review and comment of proposed ordinances and compliance programs. The Permittees request that the Regional Board revise the compliance schedule based on our recommendations or provide the Permittees with a cost-benefit analysis to support the Tentative Order's existing implementation schedule.

Proposed Compliance Schedule

ID	PERMIT ID.	Task Name	Duration	Start	Finish	2003	2004	2005	2006	2007	2008	2009
1	2.D	Legal Authority Approval Process	640 days	Wed 4/14/04	Tue 9/26/06							
2		Certified legal statement	640 days	Wed 4/14/04	Tue 9/26/06							
3	2.E	SWMP development and implementation	640 days	Wed 4/14/04	Tue 9/26/06							
4		Individual Local SWMP	640 days	Wed 4/14/04	Tue 9/26/06							
5		Watershed SWMP	640 days	Wed 4/14/04	Tue 9/26/06							
6		SUSMP Development, adoption and implementation	640 days	Wed 4/14/04	Tue 9/26/06							
7	2.F	Develop Development Planning Program	365 days	Wed 4/14/04	Tue 9/6/05							
8		Revise New Development Ordinances	640 days	Wed 4/14/04	Tue 9/26/06							
9	2.F.2.b.9	Numeric Sizing Criteria	1305 days	Wed 4/14/04	Tue 4/14/09							
10	2.G	Construction Program Development	365 days	Wed 4/14/04	Tue 9/6/05							
11		Grading ordinance update	640 days	Wed 4/14/04	Tue 9/26/06							
12	2.H	Develop Existing Development Program	365 days	Wed 4/14/04	Tue 9/6/05							
13		Modify ordinances to reflect program	640 days	Wed 4/14/04	Tue 9/26/06							
14	2.I	Public Education Program Development	365 days	Wed 4/14/04	Tue 9/6/05							
15	2.J	Illicit Discharge Detection and Elimination Program Development	365 days	Wed 4/14/04	Tue 9/6/05							
16		Modify ordinances to reflect program	640 days	Wed 4/14/04	Tue 9/26/06							
17	2.K	Watershed-based Activities	365 days	Wed 4/14/04	Tue 9/6/05							
18	2.L	SWMP Annual Report	0 days	Fri 11/26/04	Fri 11/26/04							
19	Attach B.	Monitoring	365 days	Wed 4/14/04	Tue 9/6/05							
20	ROWD		180 days	Fri 6/1/07	Thu 2/7/08							

NEED FOR REVISION TO THE MONITORING PROGRAM

The Proposed Monitoring Program Is Not Coordinated With Other Regions

The County, District and cities (Permittees) have been issued NPDES municipal separate storm sewer system (MS4) permits (Permits) by the Santa Ana¹, San Diego² and Colorado Region³ RWQCBs. In the 1990's, the District worked with each of the RWQCBs to develop a "Consolidated Monitoring Program" (CMP) to cost-effectively coordinate compliance with the monitoring requirements of the MS4 permits. The CMP included monitoring at selected stations throughout each of the Regions. The RWQCBs directed the Riverside County Permittees to implement the CMP in the "second round" MS4 permits. In addition, USEPA Region IX directed the implementation of the CMP in reissuing the MS4 permit for the Santa Margarita Region. However, the proposed Monitoring and Reporting Program (MRP) has disregarded the CMP and now specifies unique core monitoring, special studies and dry weather monitoring programs without coordination with the other Regions. The resulting increases in monitoring costs have been significant. This has occurred even in the face of the funding crises faced by the state and local government.

The Cost Of The Proposed Monitoring Program For The Santa Margarita Region Will Be Burdensome

The Fact Sheet presents estimated annual and per capita costs for the proposed monitoring program. Some of the program component costs come from external sources, such as the Center for Watershed Protection, SCCWRP, and San Diego and Orange Counties. The monitoring costs presented in the Fact Sheet consider only analytical costs.

The Permittees' estimated program costs are based on costs from their contract laboratory and staff time. Both analytical and labor costs were considered. The table on the next page summarizes the calculations.

¹ Order No. R8-2002-0011. NPDES No. CAS 618033. Waste Discharge Requirements for the Riverside County Flood Control and Water Conservation District, the County of Riverside and the Incorporated Cities of Riverside County within the Santa Ana Region Areawide Urban Runoff.

² Tentative Order No. R9-2004-001. NPDES No. CAS0108766. Waste Discharge Requirements for the Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) draining the County of Riverside, the City of Murrieta, the City of Temecula and the Riverside County Flood Control and Water Conservation District within the Santa Margarita Watershed.

³ Order No. 01-077. NPDES No. CAS617002. National Pollutant Discharge Elimination System (NPDES) Permit and Waste Discharge Requirements for Riverside County Flood Control District, Owner/Operator; County of Riverside, Owner/Operator and Incorporated Cities of Riverside County within the Whitewater River Basin, Owner/Operators for the Discharge of Whitewater River Watershed Storm Water.

SMR Monitoring Program Cost summary		
Program Costs		
	Base cost	Incl. OT
<i>SDRB estimate of proposed Core Monitoring costs</i> (Doesn't incl. TIE, TRE, Dry Weather)	\$122,068	
RCFC estimate of proposed Core Monitoring costs	\$163,143	
RCFC estimate of proposed Dry Weather costs	\$16,523	
Total monitoring costs	\$179,666	
RCFC estimate of Core Monitoring labor costs	\$77,452	\$110,448
RCFC estimate of Dry Weather labor costs	\$34,826	\$52,239
Physical costs (rating cks, report prep, vehicles, consultant)	\$136,000	\$136,000
Total labor costs	\$248,278	\$298,687
Total monitoring & labor costs	\$427,944	\$478,353
Special study costs not estimated		
Per Capita Costs		
Riverside County population estimate	168,450	
RCFC estimate of per capita Core Monitoring lab costs	\$0.97	
RCFC estimate of per capita Dry Weather lab costs	\$0.10	
RCFC estimate of per capita labor (Core & Dry) costs	\$1.47	\$1.77
Total RCFC estimate per capita costs	\$2.54	\$2.84
<i>SDRB estimate of fair per capita cost for Riverside Co.</i>	<i>\$0.57</i>	
<i>SDRB per capita cost estimate for San Diego Co.</i>	<i>\$0.36</i>	
<i>SDRB per capita cost estimate for Orange Co.</i>	<i>\$0.79</i>	
<i>SDRB per capita Core Monitoring cost estimate for Riverside Co.</i>	<i>\$0.72</i>	

In looking at the table, it is clear that the projected monitoring program per capita costs are much higher than those presented for San Diego and Orange counties. To put these costs in context, note that

- The Core Monitoring analytical costs alone are higher than those for the other counties,
- The entire population of Riverside County within the Santa Margarita Region (168,450) is less than that of the City of San Diego (1,275,000),
- Runoff from urban development in the Santa Margarita Region is intermittent and minor when it occurs and
- Runoff from urban development has no contiguous flow to the Santa Margarita River and would result in inconsequential pollutant loading to the Santa Margarita River if it did.

In contrast, many discharges of runoff from urban development within San Diego and Orange Counties are continuous, have continuity to downstream receiving water flows and discharge to and impair beaches regularly used for water contact recreation. Based on this comparison, the monitoring

burden placed on the Santa Margarita Region Permittees is excessive. The anticipated monitoring budget exceeds the entire Santa Margarita Benefit Assessment revenue past actual and future estimated totals, which has, to this time, been adequate to fund staffing, monitoring, compliance, inspections and administration of the Principal Permittee's runoff management program.

The per capita costs also do not take into consideration a comparison of *ad valorem* property values between Riverside County and those of Orange and San Diego Counties. Property taxes, which provide for the General Fund that provides the operating and service budgets of local governments, are based on *ad valorem* property values. The property values of homes in the Santa Margarita region are much lower than those of the other two counties, especially in the coastal communities. This greatly reduces the amount of additional funding that may be obtained through the General Fund. Proposition 13, passed by the voters in 1978, limits property taxes to 1% of the property value when the home was purchased, and further limits increases in the assessed property value to not more than 2% per year. The authority for allocating property tax revenues was also transferred in Proposition 13 from local government to the state.

The Data Generated Will Have Limited Utility For Management Of Runoff From Urban Development

The current monitoring program produced water quality data, which was summarized in Annual Reports. Comments on the monitoring program were not received from the Regional Board and the emphasis was on program development and implementation. Further, the Permittees were challenged by the requirement to submit three separate annual reports each year. Consequently, the monitoring program continued as presented in the CMP, with modifications made as appropriate, including the addition of a reference station in 2001.

In the draft M&RP, a detailed monitoring program is prescribed. This M&RP will also result in the collection of multitudes of data at substantial cost (see the cost analysis in the previous section). However, the appropriateness of this program to the Santa Margarita Region and the usefulness of the data in providing data of use in managing urban runoff quality is questionable.

Elements Of The Proposed Monitoring Program Are Not Appropriate For The Santa Margarita Region

Murrieta and Temecula Creeks are ephemeral.

The climate in the upper Santa Margarita watershed is characterized as semi-arid with an average annual precipitation of approximately 12 inches in the urbanized areas. Murrieta and Temecula Creeks are perennial interrupted streams, i.e.; they include reaches in which the flow is continuous and others where flow is ephemeral. The areas of perennial flow are located in mountain area tributaries and immediately downstream of springs in Warm Springs and Redhawk. The perennial flows infiltrate within a short distance of entering Murrieta or Temecula Creeks. Where runoff from urban development occurs, it is of low volume and intermittent, rapidly infiltrates and does not contribute to downstream pollutant loading. The creeks in the urbanized areas of the watershed, located primarily in the valley, are ephemeral and flows are observed only during and immediately after significant storm events. Flow occurs in each of these creeks a short distance upstream of the Santa Margarita River because of rising groundwater. This flow is augmented by imported water deliveries by the Rancho California Water District downstream of the confluence of these creeks. Therefore, monitoring of flows during non-storm conditions in the lower reaches of Murrieta and Temecula Creeks and the Santa Margarita River will not reflect contributions of runoff from urban development as the flow consists of rising groundwater approximately one-quarter to one-half mile

upstream of the confluence of Murrieta and Temecula Creeks and imported water which is delivered shortly below the confluence.

Runoff from urban development in the Santa Margarita Region is only a minor component of the total runoff during storm conditions.

Runoff from urban development is only a minor component of the total runoff during storm conditions and this runoff rapidly infiltrates and does not contribute to downstream pollutant loading. Therefore, monitoring of flows during non-storm conditions in the lower reaches of Murrieta and Temecula Creeks and the Santa Margarita River will not reflect contributions of runoff from urban development.

In an ephemeral watershed, the first storm of the year that falls under the USEPA-recommended criteria may not result in runoff from surrounding properties. The District has developed guidance on when wet-weather samples should be collected.

The Requirement To Do "Compensatory Monitoring" Does Not Make Sense In An Ephemeral System

As previously mentioned, the Santa Margarita Region receives approximately 12 inches of rain annually in the urbanized portions of the watershed. In the 2003-2004 reporting period, the watershed has received less than 2 inches of rain over the course of several small storms. This is indicative of the current drought cycle that has impacted Southern California for several years. Generating enough stormwater runoff to initiate water quality sampling requires a fairly significant storm of several hours duration. Further, the storm must be forecast early enough that the water quality sampling teams can mobilize, the labs can be notified, etc. The District has established a clear procedure under which conditions are correct for mobilization:

It is not uncommon for weather forecasters to under-predict or over-predict rainfall. Rainfall events can also fall during holiday periods, such as the Christmas Day storms last year, and can have an impact on the Permittee's ability to mobilize the significant numbers of staff required to sample storm events. For these reasons, it is common that three wet weather samples not be collected during a particular season. This is not due to negligence on the part of the Permittees, but on the variability in the accuracy of weather forecasts, the often-insignificant amount of rainfall that does occur and the length of the storms. Not only is it unclear why the Regional Board believes it is necessary to assign "compensatory monitoring" where the collection of samples is beyond the reasonable control of the Permittees, it is unclear what purpose this monitoring would serve.

Recommended Alternative Monitoring Program

The Recommended alternative monitoring program utilizes the concepts and goals stated in the draft M&RP and tailors them to maximize effectiveness in an ephemeral watershed.

Reconnaissance and IC/ID Monitoring

In an ephemeral watershed, reconnaissance and IC/ID monitoring is the most important element of the monitoring program. The MS4 permits require that the Permittees effectively prohibit the discharge of non-storm water into their respective MS4s and to Waters of the U.S. During dry weather, regular surveys of their MS4s need to be conducted by each Permittee. If water is observed, its source must be located and eliminated if not an allowed discharge.

This is a combination of proactive and reactive monitoring. The goal of reconnaissance is to regularly observe the MS4 for evidence of illicit discharges. The search for illicit discharges will lead to discovery of illegal connections, if they exist. IC/ID monitoring will be conducted as part of responses to complaint calls and further investigation resulting from reconnaissance. This element will meet or exceed the requirements of the draft M&RP Dry Weather monitoring goals.

Dry Weather Monitoring

This suggested alternate monitoring program builds on the proposed draft M&RP and selects stations to evaluate long-term trends. The goal is to look for large-scale evidence of increasing flows which indicate additional inputs. Chemical monitoring will look for evidence of illicit discharges. The Reconnaissance and IC/ID monitoring entails frequent sampling which focuses on smaller-scale areas.

Watershed Monitoring

The upper SMR watershed is subdivided into two major drainage areas, for Temecula and Murrieta Creeks. Watershed monitoring utilizes the triad approach at "sentinel" stations at the bottom of each drainage area and at a reference station within the upper SMR watershed. Chemistry, toxicity, and bioassessment are monitored at these three stations. Improvements in the urban runoff management program should be evident in improvements in water and habitat quality, although the results could be confounded by the presence of rising groundwater. If no improvements are noted in the sentinel stations, this would confirm that urban runoff is not contributing to receiving water impairments.

WATERSHED MANAGEMENT - DEFINITION OF URBAN RUNOFF

The definition of Urban Runoff in the proposed Permit broadly includes all flows in the MS4, including stormwater and non-stormwater, whether of Urban origin or within the jurisdiction of the Permittees. However, the term is consistently used in the Tentative Order to refer prescriptively to runoff from existing developments (h.1.c.1, h.3.c.1) and new developments (F.2.b.7, F.2.b.8). The Tentative Order also uses the term to broadly cover discharges from urbanized areas under the Permittees' jurisdictions. Examples include Watershed SWMP (K.m), Education (I) and occasional references in the Receiving Waters Monitoring Program (Purpose, core monitoring, triad approach, other locations).

Based on this usage, the definition is overly broad. Replacement of the Urban Runoff definition with the following definition based on the Santa Ana Region MS4 Permit is recommended. This language has been reviewed and approved by State Water Resources Control Board counsel during the approval of Board Order R8-2002-0011.

"Urban Runoff includes those storm water and non-storm water discharges from residential, commercial, industrial, and other urban and non-urban land uses and construction areas within the Permit Area that the Permittees have legal authority to regulate. Urban runoff excludes flows from agricultural activities (including feedlots, dairies and farms), open space, state and federal properties and other urban and non-urban land uses not under the legal authority of the Permittees. MS4 discharges often consist of a mix of Urban Runoff and other storm water and non-storm water flows from sources outside the Permittees control."

The current definition could raise problems. For example, the definition of urban runoff implies that the Receiving Waters Monitoring Program is not designed to specifically address discharges from Urbanized Areas, and that it is in fact, specifically designed to monitor discharges from other sources, including agriculture, Federal and State lands. Although this argument is raised further, and based on other reasons in the Monitoring Program paper, this alone could require that the Monitoring and Reporting Program be interpreted as an unfunded mandate that requires reimbursement as defined in the "unfunded mandate" position paper. Alternatively, the Regional Board should, and the Permittees request, require these other dischargers, and others in the watershed including Caltrans, Phase II dischargers, Tribal Lands, utilities and special districts to participate equally in funding the mandated receiving water monitoring programs.

COMMERCIAL/INDUSTRIAL INSPECTIONS AND MINIMUM BEST MANAGEMENT PRACTICES

The Tentative Order Incorrectly Adds Facilities to the Commercial and Industrial Inspection Program

Permit Requirement H.2.b of the Tentative Order lists commercial and industrial facilities that must be inventoried and Requirement H.2.c.1 requires that these facilities be inspected. The Fact Sheet, pages 50 – 54 provides background for the requirements in H.2. Page 51 of the Fact Sheet states:

"The list of industrial and commercial facilities in Requirement H.2.b is either specifically addressed in the federal NPDES regulations referenced above, or have been determined by the Permittees, in their facilities lists developed pursuant to Order No. R9-98-02, the SDRWQCB (SDRWQCB, 2002a), or the EPA to contribute pollutants to the MS4."

This statement is incorrect as:

1. The Permittees had only committed to inspecting those facilities currently inspected under the CAP, as well as:
 - a. Mobile automobile and other vehicle washing (base of operations)
 - b. Mobile carpet, drape, or furniture cleaning (base of operations)
 - c. Mobile high pressure or steam cleaning (base of operations)
 - d. Nurseries and greenhouses,
 - e. Landscape and hardscape installation (base of operations), and
 - f. Other commercial sites/sources that the Permittee determines may contribute a significant pollutant load to the MS4.
2. The Federal Regulations do not specifically require the inspection of specific commercial facilities, or several of the industrial dischargers listed in Requirement H.2.b.
3. The California Water Code does not require the Permittees to inspect the commercial or several of the industrial facilities listed in Requirement H.2.B

For these reasons, the Permittees request that this section be revised to conform to Section 7 of the ROWD. The Permittees have committed to continue to implement the CAP and to expand our inspection program to include those facilities listed in item #1 above. The inclusion of additional facilities, including cemeteries, golf courses, and other commercial or industrial facilities not currently inspected by the CAP would not be acceptable to the Permittees without a cost/benefit analysis to support the expenditure and a direct link between those facility types and the current impairments in the watershed. There is no justification for expansion of the inspection program due to:

- 1) The lack of water quality impairments related to these facilities in the Santa Margarita Region
- 2) The lack of any identifiable link between deficiencies in the current commercial and industrial inspection program and water quality impairments
- 3) The success of the Permittee's current IC/ID program, which more cost effectively addresses discharges from these types of facilities.

The Permittees also request that the referenced EPA document be cited.

The Permittees also request that Requirement H.2.c.1 be revised as follows:

"Each Permittee shall designate a set of minimum BMPs requirements for ALL industrial/commercial facilities to reduce the discharge of pollutants in runoff to the MEP."

To

"Each Permittee shall designate a set of minimum BMPs requirements for INVENTORIED industrial/commercial facilities to reduce the discharge of pollutants in runoff to the MEP."

The Intent of the Minimum Commercial and Industrial BMP Requirement Must Be Clarified

The Tentative Order requires the Permittees to establish and require Minimum Best Management Practices (BMPs) for Industrial and Commercial Activities (Requirement H.2.c.1). Page 53 of the Fact Sheet indicates that the Permittees listed several controls for industrial and commercial development as part of the ROWD. These controls include:

Industrial Sites:

- Require proper chemical material storage – areas kept clean, materials protected from rain/runoff, no leakage
- Ensure that dumpsters are properly maintained – lids closed, no signs of leaks, area clean
- Ensure that aboveground tanks are properly maintained – no signs of leakage to MS4, ensure proper maintenance of tanks
- Ensure onsite storm drain is protected from non-stormwater discharge
- Ensure water/oil separator is connected to sewer, ensure steam cleaning wash water is discharged to storm drain
- Ensure parking lot is free of trash and liquids other than water
- Mop water taken to sanitary sewer via clarifier
- Ensure coverage under the General Industrial Activities Stormwater Permit, if appropriate.

Commercial Sites:

- Ensure proper disposal of oil/grease (grease pumped/removed on regular basis, grease interceptor maintained properly)
- Ensure proper disposal of wash water from grease filters, floor mats, floor cleaning and grill cleaning.
- Ensure Outside areas are cleaned via dry methods such as sweeping, or that wash water is collected and conveyed to sewer
- Ensure Dumpsters are properly maintained – trash bags sealed, dumpster lids closed, dumpsters dry and not washed to MS4
- Ensure Employee Education Materials are displayed

The Permittees understand that these controls meet the intent of the requirement for Minimum BMPs for industrial and commercial facilities. BMPs implemented by the business operator must be consistent with

recommendations of the California Stormwater Quality Association (CASQA) Municipal Handbook and New Development Handbook, or equivalent, for these activities. It should be noted that several of the aforementioned BMPs target activities that specifically introduce nutrients, including phosphorous, into the MS4s. This is based on descriptions of the pollutant removal effectiveness of these BMPs in the CASQA handbooks. The Permittees therefore find these as adequate to address facilities that discharge into CWA Section 303(d) impaired water bodies impaired by nutrients, including Phosphorous (Murrieta Creek and Santa Margarita River are impaired for Phosphorous).

The Intent of the Minimum Residential Area BMP Requirement Must Be Clarified

Regional Board staff has stated that the objective of Requirement H.3.c is to establish initial controls on the high priority residential activities listed in Requirement H.3.b. Regional Board staff indicated that controls for these activities are to be based on existing Ordinances. The Permittees will propose BMPs for the listed high priority residential activities based on existing ordinances where appropriate. The Permittees understand that the minimum BMPs for residential areas may include:

- Automobile Repair and Maintenance – Use 72-hour parking limit to control disabled and leaking cars parked in streets
- Automobile Washing – Prohibit discharge of engine degreaser residue into the MS4
- Automobile Parking – Enforce parking prohibitions on areas subject to street sweeping
- Home and Garden Care activities and product use – Prohibit the disposal of excess pesticides, herbicides, and fertilizer containers or products into the MS4
- Disposal of Household Hazardous Wastes – Provide HHW/ABOP Pick-up locations and events within the watershed, prohibit discharge of HHW into MS4.
- Disposal of Pet Waste – Prohibit discharge of Pet Waste to MS4
- Disposal of Green Waste – Prohibit discharge of Green Waste to MS4

With Regard to Requirement H.3.c.2, the Permittees find that the control of fertilizers, pet waste and green waste should adequately address activities that discharge into CWA section 303(d) impaired water bodies impaired by nutrients, including phosphorous (Murrieta Creek and Santa Margarita River are impaired for phosphorous).

The Permittees will comply with Requirement H.3.c.4 by developing and distributing public education materials to residents at community events, and the Permittees may also place radio or print advertisements in local media.

PROCEDURE TO ADDRESS NON-JURISDICTIONAL DISCHARGES.

Summary

Tentative Order R9-2004-001 finds that urban runoff can carry pollutants that can cause, or threatens to cause, a condition of pollution or nuisance (as defined in CWC Section 13050) in receiving waters. The Tentative Order further finds that Permittees cannot "passively" accept pollutant-laden discharges from third party sources into their MS4s. The Tentative Order then prohibits discharges into an MS4 that causes, or threatens to cause, a condition of pollution, contamination or nuisance (as defined in CWC Section 13050), in waters of the State.

Pollutant-laden discharges from third parties can come from many different sources, both within and outside of the authority of the Permittees to control. As the Tentative Order is currently written, a discharge source outside of the Permittees' authority that causes, or threatens to cause, a condition of pollution, contamination or nuisance (as defined in CWC Section 13050), in waters of the State, could place the Permittees in a position of unavoidable non-compliance with the requirements of Tentative Order R9-2004-001. This condition would also exist should the discharger refuse Permittee requests to voluntarily cease the discharge. Permittees will comply with the requirements of the Tentative Order relative to the subject of non-jurisdictional discharges as referenced in the procedure outlined below, subject to the authority and limitations imposed by federal and state law (including, but not limited to, the United States and California constitutions, Title 33 U.S.C. Sections 1251 et seq., California Water Code Sections 13000 et seq., statutory and decisional law relating to drainage, water rights and water quality).

Regional Board staff have suggested that the Permittees develop a proposed amendment to the existing DAMP whereby a procedure is established to address non-jurisdictional discharges that causes, or threatens to cause, a condition of pollution, contamination or nuisance in waters of the State. This procedure would be credited in the Findings of the Tentative Order as meeting MEP with regard to discharges from third party sources outside the jurisdiction of the Permittees. The procedure would ensure that the Permittees are taking an active role in promoting water quality management throughout the Santa Margarita Region, not just in areas under their jurisdiction.

A procedure to address non-jurisdictional discharges is hereby submitted as an amendment to the DAMP.

Regulatory Authority:

Finding 18 of Tentative Order R9-2004-001 states:

"As operators of the MS4s, the Permittees cannot passively receive or discharge pollutants from third parties. By providing free and open access to an MS4 that conveys discharges to waters of the U.S., the operator essentially accepts responsibility for discharges into the MS4 that it does not prohibit or control. These Discharges may cause or contribute to a condition of contamination or exceedances of receiving water quality objectives."

Provision A.1 of Tentative Order R9-2004-001 states:

"Discharges into and from MS4s in a manner causing, or threatening to cause, a condition of pollution, contamination, or nuisance (as defined in CWC Section 13050), in waters of the state are prohibited."

The following procedure describes an approach to address non-jurisdictional discharges into the MS4s owned and operated by the Permittees:

3.4.1 Procedure to address discharges to Permittee MS4s from sources outside the authority of the Permittees.

The Permittees lack legal jurisdiction over discharges into their respective MS4s from agricultural activities, California and federal facilities, utilities and special districts, Native American tribal lands, and other point and non-point source discharges otherwise permitted or approved by the Regional Board.

If the Permittees Illicit Connection/Illegal Discharge (IC/ID) Detection and Elimination Program or Receiving Waters Monitoring Program identifies non-jurisdictional discharge causing, or threatens to cause, a condition of pollution, contamination or nuisance (as defined in CWC Section 13050), in waters of the State, the following minimum guidelines will be followed:

- 1) The Permittees will document the non-jurisdictional discharge.
- 2) When appropriate, collect samples of the non-jurisdictional discharge.
- 3) In emergency situations, the Permittees will utilize the Hazardous Materials Emergency Response Team and coordinate with the Office of Emergency Services and the San Diego Regional Board to control the impact of the non-jurisdictional discharge on MS4s and receiving waters.
- 4) The Permittees will notify the discharger verbally, at minimum, of their illegal discharge and the impact on receiving waters and provide appropriate educational materials.
- 5) If necessary, the Permittees will contact the appropriate enforcement agency and/or the San Diego Regional Water Quality Control Board to notify them of the non-jurisdictional discharge causing, or threatening to cause, a condition of pollution, contamination or nuisance, in waters of the State.
- 6) Permittees will notify the responsible entity of the availability of technical assistance and provide guidance in seeking grants and other assistance to address the non-jurisdictional discharge.

The Permittees will, as appropriate, participate in watershed management efforts with other Federal, State, regional, local agencies and other watershed stakeholders to address stormwater quality issues within the watershed.

RUNOFF FROM URBAN DEVELOPMENT IS NOT A SIGNIFICANT SOURCE OF IMPAIRMENT

Urban Development is a Minor Land Use in the Santa Margarita Region

Although portions of the Santa Margarita Region are experiencing rapid growth, 94 percent of the watershed is comprised of non-urban (rural residential, agriculture, state lands, federal lands, and tribal lands) land uses.¹ It is projected that the population of Riverside County will increase approximately 20 percent by 2010.² Assuming that the urbanized area increases proportional to population, 93 percent of the watershed would remain in non-urban land uses in 2010. As a result, runoff from urban development is only a minor component of the storm flow received by the Santa Margarita River.

Non-Storm Runoff From Urban Development is Not a Water Quality Problem

Runoff from urban development is not a contributor to water quality and quantity in the Santa Margarita River during non-storm conditions. With the exception of rising groundwater and water in the lowest reaches of Murrieta and Temecula Creeks and deliveries of imported water from the Rancho California Water District, there is no perennial flow to the Santa Margarita River from urban development in the Santa Margarita Region. During the majority of the year and throughout the non-storm period, the entire system is essentially dry with the following minor exceptions:

- Flows resulting from springs in Redhawk and Warm Springs Creeks each of which infiltrate within a few feet of entering Temecula and Murrieta Creeks, respectively.
- Intermittent, low-volume discharges of non-storm runoff from urban development. These flows infiltrate rapidly, so there is no contiguous flow to the Santa Margarita River. However, even if contiguous flow did occur, these flows would not result in significant pollutant loading to the Santa Margarita River.
- The most significant non-storm discharges in the watershed consists of raw water supply well blow off which is allowed by the Regional Board.

Water Quality Problems Related to Runoff From Urban Development are Minor and Effectively Controlled

The single water quality impairment in the Santa Margarita Region identified by the Regional Board in the 2002 California 303(d) List and TMDL Priority Schedule is for phosphorous. However, the Basin Plan objective for phosphorous is set so low that even background conditions unaffected by urban or agricultural development exceed this limit. Given that there is no non-storm runoff from urban development to the Santa Margarita River, there is no loading of phosphorous contributing to downstream impairments during these conditions.

Although the Permittees have identified several pollutants of concern, they are effectively managed by the existing management programs and, with the possible exception of phosphorous, do not contribute to impairments.

¹ County of Riverside Assessor, 2002.

² Southern California Association of Governments, May 2003.

Management of peak flow and volume from new developments is effectively addressed by existing Permittee requirements. In general, the Permittees require peak flow and volume to be managed to pre-development conditions unless the receiving drainage has been improved to accept the increased peak discharge and volume. The requirements to control peak discharges and volume in the Tentative Order should be similarly revised so as not to negatively impact housing costs without providing an environmental benefit.

The current and projected storm flows in the Santa Margarita River are less than under natural conditions due to the construction and operation of Diamond Valley Reservoir, Lake Skinner and Vail Lake.³ Over 50% of the Santa Margarita River watershed has been controlled by the construction of Vail Dam in 1949 and Skinner Reservoir in 1974, which created significant storage capacity in the upper watershed.⁴ Due to this storage capacity, peak flow rates during major flow events for both existing and future land use conditions will be lower than under natural conditions (assuming average storage conditions in the reservoirs).⁵ Further, the areas of the Santa Margarita Region that receive the most precipitation are controlled by Skinner and Vail Lakes.

Water quality problems associated with urban development in other areas that are cited in the Fact Sheet are not problematic here. This illustrates the unique watershed characteristics in the Santa Margarita Watershed and the effectiveness of the existing compliance programs implemented by the Permittees.

The New and Expanded Compliance Requirements Will Not Address the Phosphorous "Impairment"

As noted previously, the 2002 CWA Section 303(d) List of Water Quality Limited Segments lists Murrieta Creek and the Upper Santa Margarita River as impaired for phosphorus, with a low TMDL priority. Considering past and current agricultural use in the Santa Margarita Region, the presence of elevated levels of phosphorus is not unexpected.

The 303(d) listing for phosphorus is based on the Basin Plan Objective of 0.1 mg/L for total phosphorus. Some BPOs, especially for nutrients, may be unachievable using conventional stormwater BAT/BCT. The Center for Watershed Protection⁶ presents a table of "irreducible concentrations" of selected contaminants, the lowest concentration that can possibly be achieved using existing BMPs. The table, reprinted below, is:

³ California Department of Finance, 2003.

⁴ Philip Williams & Associates, Santa Margarita Watershed Study: Hydrology and Watershed Processes, October 26, 1998, p. 14.

⁵ Philip Williams & Associates, Santa Margarita Watershed Study: Hydrology and Watershed Processes, October 26, 1998, p. 20.

⁶ *Irreducible Pollutant Concentrations Discharged From Stormwater Practices*, article 65, *The Practice of Watershed Protection*, editors Thomas R. Schueler and Heather K. Holland, published 2000 by the Center for Watershed Protection, Ellicott City, MD.

Water Quality Parameter	Irreducible Concentration
TSS	20 – 40 mg/L
Total Phosphorus	0.15 – 0.2 mg/L
Total Nitrogen	1.9 mg/L
Nitrate as Nitrogen	0.7 mg/L
Total Kjeldahl Nitrogen	1.2 mg/L

The irreducible concentrations for Total Nitrogen and Total Phosphorus are almost twice their respective BPOs, indicating that the BPOs may be unachievable with current BMP technology.

No Future Problems with Runoff from Urban Development Are Expected

Given the effectiveness of the existing program and other local, state and federal source control programs implemented in the Santa Margarita Region, no future water quality impairments associated with runoff from urban development are expected in the Santa Margarita Region. No future problems associated with runoff from urban development are expected as the SUSMP requirements specified in the Tentative Order require implementation of project specific controls. Further, with the increased control of pollutant sources that have resulted from increased regulation of hazardous materials, controls on the use of pesticides and the existing inspection and control programs implemented by the Permittees, no impairments of beneficial uses due to runoff from urban development in the Santa Margarita Region are expected in the future.

THE TENTATIVE ORDER SHOULD CONTAIN A COST/BENEFIT ANALYSIS

The Permittees have fundamental concerns about the way in which the Tentative Order proposes to manage runoff from urban development as an element of the overall water quality management program. Chief among these concerns is the prescriptive nature of the Tentative Order, which mandates implementation of a number of programs, none of which will address an identified water quality problem or promise to provide a significant water quality benefit. Further, these programs are mandated without consideration of the funding and staffing resources that will be required to implement these programs.

The cornerstone of the National Pollutant Discharge Elimination System is the concept that the discharge of pollutants from municipal storm sewers must be controlled "to the maximum extent practicable". The MEP standard is set forth in Section 402(p) of the Clean Water Act, which requires that NPDES permits shall:

require controls to reduce the discharge of pollutants **to the maximum extent practicable**, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

(33 U.S.C. § 1342(p).)(Emphasis added.) Almost by definition, the MEP standard requires a weighing of the costs and the benefits of any program to enhance water quality. (See, e.g., 64 Fed.Reg. 68722, 68754 (Dec. 8, 1999); Clean Water Initiative, p. 119; Board Order WQ 2000-11, p. 10.)

In addition, State law requires that the Regional Board consider the costs and the benefits associated with the development of Basin Plans. Pursuant to Water Code Section 13263(a), the Regional Board must consider all of the factors set forth in Water Code Section 13241 when issuing an MS4 permit. Water Code Section 13241 only authorizes the Regional Board to require water quality conditions "that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area". As part of its analysis, the Regional Board must take into account "economic considerations". (Water Code § 13241(d). Therefore, responsible public process calls for consideration of cost/benefits (supported by analysis and quantified costs) for permit requirements which implement Basin Plans. This is particularly critical in the Tentative Order for the Santa Margarita Region where numerous new requirements are proposed that potentially pose significant expense to municipal budgets with no identified funding sources.

64 Fed Reg 68722 & 68723 require flexible interpretation of the MEP concept based on site-specific characteristics and "cost considerations as well as water quality effects ...". Thus, the Regional Board is also advised in the Federal Regulations to consider costs as a factor in determining the reasonableness and practicality of permit requirements.

Therefore, under both Federal and State law the Regional Board must consider the costs and the benefits of the Tentative Order. More fundamentally, the public demands consideration of economic factors in the establishment of all public policy, including public health and safety, education, homeland security and even defense. There is nothing to justify not considering economic factors in establishing requirements for public management of stormwater quality, especially in light of the current and expanding State and local fiscal crises. However, nothing in the Tentative Order or related documents indicates that such an analysis has taken place. The Permittees are very concerned about the costs associated with implementing the program set forth in the Tentative Order. We would like to see a weighing of these costs with the benefits to be derived from some of the components of the program, especially those components such as the construction and industrial inspections that are currently being conducted by other entities, including the Regional Board.

While the Permittees share the Regional Board's goal of water quality protection, the Board of Supervisors and the City Councils have been elected by the citizens of California within the Santa Margarita Region to prioritize and balance finite public resources to provide many important public facilities and services. In addition to management of runoff quality from urban development, the Cities and County are responsible for providing police and fire services, libraries, infrastructure maintenance, parks, roads, drainage facilities, affordable housing, habitat conservation, environmental quality protection and many other municipal facilities and services. Although each of these needs are important, the realities of municipal finance do not permit any need to be funded without consideration of competing needs and priorities. The prescriptive requirements proposed in the Tentative Order preclude the local elected officials the opportunity to balance water resource needs with other resource needs. Further, our elected officials and the citizens of California within the Santa Margarita Region rightfully demand that expenditures be justified in terms of demonstrated local need and effectiveness of the proposed programs in addressing the local need. Therefore, even if a cost/benefit analysis were not required, prudent public policy demands that such an analysis be conducted.

A meaningful cost/benefit analysis cannot be prepared by the Regional Board's engineers and scientists alone. Such an analysis of cost and implementation impacts will require the full participation of the Permittee financial, legal and program staff.

THE REGIONAL BOARD MUST COMPLY WITH CEQA

Finding 29 of the Tentative Order asserts that the Regional Board is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Water Code Section 13389. However, Water Code Section 13389 only applies to actions that are required under the Clean Water Act (CWA). (See Water Code § 13372.) As Committee for a Progressive Gilroy v. State Water Resources Control Board (1987) 192 Cal.App.3d 847, 862 makes clear the exemption contained in Water Code Section 13389 is a limited exemption and does not insulate discretionary acts of the Regional Board from the requirements of CEQA. The Tentative Order goes beyond the requirements of the Clean Water Act and imposes requirements that are discretionary, not mandatory. Therefore, adoption of the Tentative Order should only occur after the appropriate CEQA review has been performed.

The remaining non-exempt provisions of CEQA require the Regional Board to consider the environmental consequences of their permitting actions and to explore feasible alternative and mitigation measures prior to the adoption of waste discharge requirements. Cal. Pub. Res. Code 21002. Substantial evidence exists which shows that the permit will have a significant impact on the environment.

Given the breadth of the Tentative Order and its potential impacts on the environment, cost and availability of housing and local funding for local facilities and services, there is good reason for the Regional Board to conduct the appropriate review under CEQA. For example, Finding 28 of the Tentative Order recognizes that certain BMPs which are "implemented or required by municipalities for urban runoff management may create a habitat for vectors (e.g., mosquitoes and rodents)". The environmental implications of this threat, along with the impacts the possible responses to this threat may also have on the environment, is just one example of the types of issues which must be studied by the Regional Board. Other issues associated with the development and implementation of certain best management practices include additional energy requirements, and potential air quality impacts and overall effects on hydrology and riverine geomorphology. These are all environmental impacts which are not CWA exemptions and should have been fully considered.

The need for the Regional Board to comply with CEQA is particularly true in light of the components of the Tentative Order which require the Permittees to conduct heightened CEQA review of projects. For example, Section F.3.a-k requires the Permittees to review their CEQA documents to ensure that stormwater-related issues are properly considered and appraised, and, if necessary, requires the revision of environmental review processes. This section goes on to mandate that certain specific items be considered for development projects. The Regional Board does not have the authority to revise the CEQA checklist or make it applicable to projects not otherwise subject to CEQA. In addition, it is the Regional Board and not the Permittees who should consider the environmental impacts created by the Tentative Order.

CONSTRUCTION DATABASES

The Tentative Order requires the development of a construction database that is to include "an inventory of all construction sites within its jurisdiction regardless of site size or ownership". The term "construction site" is defined as "any project requiring a local grading or building permit, including projects requiring coverage under the General Construction Permit". This requirement is overly broad as each Permittee issues many building permits and can range from the mass grading of a site to a water heater installation.

The USEPA determined that the minimum construction project worthy of regulation under Phase I are those that disturb five acres or more of land and one acre under Phase II. These projects should be adequately addressed in the database maintained by the State Water Resources Control Board. Although the definition of Storm Water Discharge Associated with Small Construction Activity (40 CFR 122.26.B.15) can include disturbances of less than one acre, it is also clear that this only applies to "disturbances of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan or development will ultimately disturb equal to or greater than one and less than five acres". It should be noted that "small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility". The Permittees request that the term Construction Site be redefined as

"Sites undertaking construction activities including clearing, grading and excavating that result in land disturbances of equal to or greater than one acre. Construction Sites do not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility."

The Permittees object to the proposed requirements to establish a more extensive database without a clear justification of a need and demonstration of an expected benefit commensurate with the resources needed to implement this requirement.

Although Regional Board staff have indicated that the Permittees existing systems for tracking building and grading permits may be adequate, substantial modification of these systems would be required to adequately track required inspections, enforcement actions related to construction sites as required in the Tentative Order. Further, the additional staff time required to track water quality related inspections and enforcement for tens of thousands of building and grading permits that have minimal water quality impacts could be substantial. The County of Riverside alone issued 30,000 building and grading permits last year. In addition to this extensive requirement being expensive to develop and maintain, it would also not be useful to the Permittees in managing construction-related stormwater quality. Construction sites less than one acre are effectively addressed by existing Permittee surveillance activities and community hotline and public education programs. As such, the requirement to establish and maintain such a database would not result in a water quality benefit.

THE TENTATIVE ORDER IMPOSES UNFUNDED STATE MANDATES

Article XIII B, Section 6 of the California Constitution requires the State to reimburse local governments for the costs associated with a new program or higher level of service mandated by the Legislature or any State agency. The one exception is for "mandates of . . . the Federal government which, without discretion, require an expenditure for additional services or which unavoidably make the providing of existing services more costly". (Cal.Const. art., XIII B, § 9(b); Sacramento v. California (1984) 50 Cal.3d 51.) However, this exception applies only where "the State had no 'true choice' in the manner of implementation." (Hayes v. Commission on State Mandates (1992) 11 Cal.App.4th 1564, 1593-94.)

The Tentative Order goes beyond what is required by the Clean Water Act. Thus, to the extent the Regional Board chooses to exercise its discretion to impose such requirements on the Permittees, it must comply with the prohibition against unfunded mandates set forth in the California Constitution.

Examples of unfunded mandates include, but are not limited to:

- Requirement to inspect commercial and industrial facilities not specified in 40 CFR 122.26.
- Requirement to review monitoring reports from industrial facilities covered under the State's General Permit.
- Costs associated with the requirement to update grading ordinance to include controls prescribed by the Regional Board in Requirement G.3, including costs associated with inspections and grading plan review associated with the prescribed items.
- Requirement to prepare Individual Storm Water Management Plans
- Requirement to implement "dual inspection" of construction and industrial facilities covered under the State's General Permits.
- Requirement to implement a watershed based Monitoring and Reporting Program as opposed to a Monitoring and Reporting Program that focuses on urban runoff management.

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February 5, 2004

VIA FEDERAL EXPRESS

Ms. Megan Quigley
Environmental Scientist-C
California Regional Water Quality Control
Board - San Diego Region
9174 Skypark Court, Suite 100
San Diego, CA 92123

Re: Request to Include Documents in Administrative Record Related to
Tentative Order No. R9-2004-001, Waste Discharge Requirements for
Discharges of Urban Runoff from the Municipal Separate Storm Sewer
Systems (MS4s) Draining the County of Riverside, the City of Murrieta,
the City of Temecula and the Riverside County Flood Control and Water
Conservation District Within the Santa Margarita Watershed

Dear Ms. Quigley:

This law firm serves as the City Attorney for the City of Temecula, California
("City"), one of the co-permittees under Tentative Order No. R9-2004-01, NPDES
No. CAS 108766, "Waste Discharge Requirements for Discharges of Urban Runoff
from the Municipal Separate Storm Sewer Systems (MS4s) Draining the County of
Riverside, the City of Murrieta, the City of Temecula and the Riverside County
Flood Control and Water Conservation District Within the Santa Margarita
Watershed" ("Tentative Permit").

We are forwarding a copy of the Report of the University of Southern California's
School of Engineering and School of Policy, Planning and Development dated
November 2002, entitled "An Economic Impact Evaluation of Proposed Storm
Water Treatment for Los Angeles County" ("USC Study").

We believe that the USC Report should be considered by the Regional Board's
deliberations regarding the adoption of the Tentative Permit, and specifically, the
potential economic impact of the Tentative Permit.

RICHARD RICHARDS
(1916-1988)

GLENN R. WATSON
(RETIRED)

HARRY L. GERSHON
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STEVEN H. KAUFMANN
GARY E. GANS
JOHN J. HARRIS
KEVIN G. ENNIS
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MICHAEL ESTRADA
LAURENCE S. WIENER
STEVEN R. ORR
B. TILDEN KIM
SASKIA T. ASAMURA
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WILLIAM P. CURLEY III
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MICHAEL P. COYNE
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PATRICK K. BOBKO
DANIEL R. GARCIA
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SAN FRANCISCO OFFICE
TELEPHONE 415.421.8484

ORANGE COUNTY OFFICE
TELEPHONE 714.990.0901

Ms. Megan Quigley

February 5, 2004

Page 2

The City is extremely concerned about the costs that the Tentative Permit, if adopted as currently drafted, will impose upon it and its citizens. Moreover, while the City would be concerned about these costs during the best of times, these concerns are now magnified during this State's current fiscal crisis. The City, like all local governments within this State, is facing the very likely prospect of having to institute staff layoffs and cutbacks in public services, in order to weather the current financial crisis. Consequently, the costs imposed on the City through its compliance with the Tentative Permit will be particularly difficult for it to absorb.

More importantly, however, because of the breadth of the Tentative Permit's terms and conditions, it appears that the Regional Board has gone beyond simply renewing the existing MS4 Permit, and is instead apparently adopting rules of general application.

The USC Study was commissioned for the purpose of exploring the economic impact of Los Angeles Municipal NPDES Permit on local governments. The authors of this study concluded that "advance treatment of storm water flows will likely be required to meet current and anticipated federal and state water quality standards. The authors further concluded that "[s]uch treatment will be extremely costly and will generate significantly negative economic consequences for our region."

We believe the Regional Board should consider the USC Study, as it moves forward toward its ultimate adoption of a renewed MS4 Permit for the City and its co-permittees.

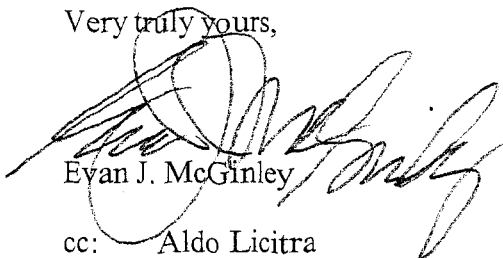
Ms. Megan Quigley

February 5, 2004

Page 3

Should you need additional copies of the documents, or if you have any questions regarding this request, please feel free to contact me at (213) 626-8484.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Evan J. McGinley', is written over a circular stamp or seal.

Evan J. McGinley

cc: Aldo Licitra
Peter M. Thorson, Esq.
John J. Harris, Esq.

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UNIVERSITY OF SOUTHERN CALIFORNIA
CONTROL BOARD

2004 FEB -7 A 9:29

UNIVERSITY
OF SOUTHERN
CALIFORNIA

An Economic Impact Evaluation of Proposed Storm Water Treatment for Los Angeles County

by

Peter Gordon
John Kuprenas
Jiin-Jen Lee
James E. Moore
Harry W. Richardson
Christopher Williamson

with the assistance of

Donghwan An
Qisheng Pan
Ken Rekdahl
Xia Zhu

School of Engineering and School of Policy, Planning, and Development
University of Southern California
Los Angeles, CA 90089

November 2002

The findings and views expressed in this report are solely those of the authors and not of the officers or the Board of Trustees of the University of Southern California.

From: Bruce Fujimoto
To: Megan Quigley
Date: 2/9/04 11:11AM
Subject: Draft Riverside Permit

attached are some comments/questions regarding the draft Riverside Permit.

Bruce

Comments on the MS4 permit for Riverside county

1. On page 27, under Residential Program of the Existing Development section, one of the categories of Source Identification is Automotive parking. The questions that come to mind is 1) why is this listed here and 2) according to subsections c) (3) & (4), what minimum BMPs are imagined for this activity?
2. Starting on page 18, there is a question as to why two sections that were included in the San Diego and Orange County MS4 permits, were not included in this permit. Specifically, the sections referring to 1) Threat to Water Quality prioritization, and 2) Reporting of Non-compliant Sites.
3. On page 31, Section M. 2. a), the permit requires the submittal of the SWMP in one year from adoption. This requirement says it's required by the Monitoring and Reporting Program (MRP), but the MRP only has reference to submittal of an Annual Report. Some clarification is needed here to avoid confusion.
4. On page 3 of the MRP, Table 1 indicates the short list of constituents to monitor for. To avoid confusion, the Trace metals list should indicate whether these constituents should be analyzed for total or dissolved fractions.
5. On page 5, formatting note, top of table 2 should be dropped to next page.
6. On page 7, under Special Studies, there is mention of developing a numeric criteria to "minimize erosion of natural stream channels and impacts to instream habitat." This statement really doesn't indicate what parameters the discharger should develop criteria for, even though it does give the intent. Clarification would help avoid confusion. Also, would this criteria be subject to Board Approval?
7. On page 10, another formatting note, the top of the page (section C. (d)) should be brought "up" to the next page. Seems like an errant page break.
8. On page 1 of Attachment D, the first line refers to *tentative* Order No. R9-2004-001. Tentative should be taken out, as it will not be tentative when adopted.



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FACSIMILE TRANSMISSION

February 10, 2004

TO:

John Robertus
Executive Officer
California Regional Water Quality Control
Board - San Diego Region

FAX NO:

(858) 571-6972

PHONE NO:

(858) 467-2357

Megan Quigley
California Regional Water Quality Control
Board - San Diego Region

(858) 571-6972

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FROM:

Evan J. McGinley

FILE NO:

11086.0112

USER NO:

8712

DOCUMENT DESCRIPTION: Agenda Item 12 - February 11, 2004 hearing.

REFERENCE:

NUMBER OF PAGES (INCLUDING COVER): 32

REMARKS:

1. Objection of City of Temecula to Conducting Hearing on Tentative Order No. R9-2004-001 as an Informal Proceeding and Request to Permit Cross Examination of Witnesses; and
2. Evidentiary Objections of the City of Temecula to Documents Purporting to Support Tentative Order No. R9-2004-01

THIS INFORMATION IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHOM IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF YOU ARE NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE (COLLECT), AND RETURN THE FAX TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE.
IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE PHONE 213.626.8484 AS SOON AS POSSIBLE.

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8 Attorneys for Permittee,
CITY OF TEMECULA
9

10 **BEFORE THE REGIONAL WATER QUALITY CONTROL BOARD -**
11 **SAN DIEGO REGION**

12
13 In the Matter of

Agenda Item No. 12

14 California Regional Water Control Board - San
Diego Region, Tentative Order
15 No. R9-2004-001, NPDES No. CAS0108766,
Waste Discharge Requirements for Discharges
16 of Urban Runoff From the Municipal Separate
Storm Sewer Systems (MS4s) Draining the
17 County of Riverside, the City of Murrieta, the
City of Temecula and Riverside County Flood
18 Control and Water Conservation District within
the Santa Margarita Watershed.
19

OBJECTION OF THE CITY OF
TEMECULA TO CONDUCTING
HEARING ON TENTATIVE ORDER
R9-2004-001 AS AN INFORMAL
PROCEEDING AND REQUEST TO
PERMIT CROSS EXAMINATION OF
WITNESSES

DATE: February 11, 2004

20
21 Pursuant to 23 C.C.R. § 648.7, the City of Temecula ("City") objects to the determination
22 by the Regional Water Quality Control Board - San Diego Region ("Regional Board"),
23 announced in the Agenda for its February 11, 2004 meeting ("Hearing"), to conduct an informal
24 hearing on Tentative Order No. R9-2004-001, the "Municipal Storm Water Permit for the County
25 of Riverside, the City of Murrieta, the City of Temecula, and the Riverside County Flood Control
26 and Water Conservation District within the Santa Margarita Watershed (Upper Santa Margarita
27 Watershed)" ("Tentative Permit"). The City hereby requests that the Regional Board conduct the
28 hearing as a formal adjudicatory hearing, pursuant to the provisions of 23 C.C.R. § 648, et seq.

OBJECTION OF THE CITY OF TEMECULA TO CONDUCTING HEARING ON TENTATIVE ORDER R9-2004-001 AS
AN INFORMAL PROCEEDING AND REQUEST TO PERMIT CROSS EXAMINATION OF WITNESSES

The City also requests that the Board provide it and all other permittees the opportunity to cross-examine such Regional Board staff and other witnesses that may testify at the Hearing.

A. DISCUSSION

The importance and complexity of the issues which will be reviewed at the Hearing on the Tentative Permit require that the hearing be conducted as a formal proceeding pursuant to the State Board's regulations governing adjudicative hearings, which are set forth at 23 C.C.R. §648, et. seq. 22 C.C.R. §648.7 provides that "a matter shall not be conducted pursuant to an informal hearing procedure over timely objection by the person to whom agency action is directed unless an informal hearing is authorized under subdivision (a), (b), or (d) of Section 11445.20 of Chapter 4.5 of the Administrative Procedures Act."

None of the situations identified in Government Code § 11445.20(a), (b) or (d) are present here, that is, this is not a "proceeding where material facts are agreed upon by all parties", or where the "amount in controversy is not more than \$1,000", or a "proceeding where an evidentiary hearing of a determination of facts is not required by statute but where the agency determines the federal or state Constitution may require a hearing." Gov't Code § 11445.20.

Among the factors which warrant conducting this hearing as a formal adjudicatory hearing are: 1) "the number of parties; (2) "the number and nature of written comments"; (3) "the number of interested parties wishing to present oral comments"; (4) "the complexity and the significance of the issues involved" and (5) the need to create a record in the matter." See, 23 C.C.R. §648.7. Based upon the factors set forth in Section 648.7, a formal hearing on the Tentative Permit is warranted. Since Temecula has objected to an informal hearing, the Board must conduct a formal hearing.

There are several reasons why the Hearing should appropriately be conducted as a formal adjudicative proceeding.

First, unlike the standard NPDES permit, where only one party is regulated by the permit in question, here, four separate parties are regulated, the County of Riverside, the Riverside

1 County Flood Control and Water Conservation District ("County"), the City of Murrieta and the
2 City of Temecula and the permit will have a significant environmental and economic impact on
3 the region.

4 Second, the Regional Board has, to date, received over eighty pages of written comments
5 from just the County, the City of Temecula and the Building Industry Association of Southern
6 California. *See*, Supporting Document No. 4. These comments raise a number of substantial and
7 very complex issues which deserve to be heard and addressed by the Regional Board under the
8 auspices of a formal hearing. (*See*, for example, Letter from Michael S. Nagger, Mayor, City of
9 Temecula, to John H. Robertus, Executive Officer, Regional Board, Jan. 27, 2004 ("The City is
10 particularly concerned with the compliance schedules proposed by the Tentative Order. These
11 schedules fail to recognize municipal budgetary processes, logistical needs for program
12 implementation, State procedural requirements for ordinance adoption, and other practical
13 considerations that will be faced in implementing new programs."); *See also*, Letter from
14 Warren D. Williams, General Manager & Chief Engineer, Riverside County Flood Control and
15 Water Conservation District to John H. Robertus, Jan. 28, 2004 ("More specific concerns
16 regarding the Tentative Order include the lack of evidence to support several of the findings in
17 the Tentative Order, the lack of a cost/benefit analysis regarding the Tentative Order's inspection
18 components, compliance schedule, compliance with and conditions relating to the California
19 Environmental Quality Act (CEQA), and other related concerns.").

20 Third, given the tremendous number of interested government officials and staff,
21 businesspeople and ordinary citizens who turned out for the Regional Board's informal workshop
22 on the Tentative Permit on January 28, 2004, it is reasonable to assume that a substantial number
23 of people will also be interested in presenting written and oral comments at the Regional Board's
24 February 11, 2004 meeting.

25 Fourth, the issues which the permittees and others have raised and continue to raise
26 regarding the Tentative Permit are both complex and significant. In this regard, the excerpts
27 cited above which were taken from the County's and the City of Temecula's written comments

1 serve to demonstrate just how complex and significant the issues surrounding the adoption of the
 2 Tentative Permit will be to those parties which will be both directly and indirectly regulated by
 3 what will ultimately be adopted as the Permit.

4 Finally, considering the magnitude of the issues which are implicated by the Tentative
 5 Order, an adequate record must be developed now, in order to demonstrate the factual basis and
 6 the rationale for the Regional Board's actions.

7 Given the very real complexity and significance of the issues which the Tentative Permit
 8 raises for the permittees, and considering the City's formal objection to an informal hearing, the
 9 February 11, 2004 hearing must be conducted according to the formal requirements set forth
 10 under 23 C.C.R. § 648, et seq.

11 **B. REQUEST TO CONDUCT CROSS-EXAMINATION OF WITNESSES**

12 The City further requests that it be given the opportunity, through its counsel, to conduct
 13 cross-examination of witnesses, including the Regional Board staff who will be making
 14 presentations at the February 11, 2004 hearing.

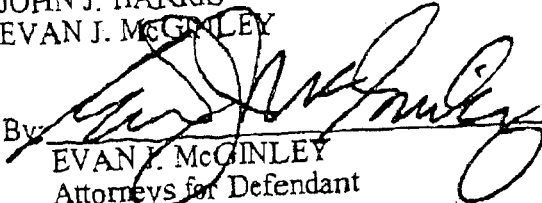
15 Even if the Regional Board proceeds to conduct the February 11th hearing under the State
 16 Board's rules for informal hearings, as provided for under 23 C.C.R. § 648.7, the City is entitled
 17 to conduct "[c]ross-examination of parties' witnesses", as provided for under 23 C.C.R.
 18 §648.5(a)(6).

19 Accordingly, the City hereby notifies the Regional Board that it intends to exercise its
 20 rights under 23 C.C.R. §648.5(a)(6) at the Regional Board's February 11, 2004 hearing and
 21 requests the opportunity to cross-examine those Regional Board staff who testify at the hearing.

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1 DATED: February 10, 2004
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RICHARDS, WATSON & GERSHON
A Professional Corporation
PETER M. THORSON
JOHN J. HARRIS
EVAN J. MCGINLEY

By 
EVAN J. MCGINLEY
Attorneys for Defendant
CITY OF TEMECULA

RICHARDS | WATSON | GERSHON
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

PROOF OF SERVICE

I, Lillian Dominguez declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Richards, Watson & Gershon, 355 South Grand Avenue, 40th Floor, Los Angeles, California 90071. On February 10, 2004, I served the within documents:

**OBJECTION OF THE CITY OF TEMECULA TO CONDUCTING HEARING
ON TENTATIVE ORDER R9-2004-001 AS AN INFORMAL PROCEEDING
AND REQUEST TO PERMIT CROSS EXAMINATION OF WITNESSES**

☒ by causing facsimile transmission of the document(s) listed above from (213) 626-0078 to the person(s) and facsimile number(s) set forth below on this date before 5:00 P.M. This transmission was reported as complete and without error. A copy of the transmission report(s), which was properly issued by the transmitting facsimile machine, is attached. Service by facsimile has been made pursuant to a prior written agreement between the parties.

☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below. I am readily familiar with the firm's practice for collection and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing contained in this affidavit.

☐ by placing the document(s) listed above in a sealed envelope and affixing a prepaid air bill, and causing the envelope to be delivered to a n agent for delivery, or deposited in a box or other facility regularly maintained by , in an envelope or package designated by the express service carrier, with delivery fees paid or provided for, addressed to the person(s) at the address(es) set forth below.

John Robertus
Executive Officer
California Regional Water Quality Control
Board - San Diego Region
9174 Skypark Court, Suite 100
San Diego, CA 92123
Fax (858) 571-6972
Telephone (858) 467-2357

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 10, 2004.


Lillian Dominguez

1 PETER M. THORSON (83088)
 2 CITY ATTORNEY
 CITY OF TEMECULA

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 7

8 Attorneys for Permittee,
 CITY OF TEMECULA
 9

10 **BEFORE THE REGIONAL WATER QUALITY CONTROL BOARD -**
 11 **SAN DIEGO REGION**

12
 13 In the Matter of

14 California Regional Water Control Board - San
 Diego Region, Tentative Order
 15 No. R9-2004-001, NPDES No. CAS0108766,
 Waste Discharge Requirements for Discharges
 16 of Urban Runoff From the Municipal Separate
 Storm Sewer Systems (MS4s) Draining the
 17 County of Riverside, the City of Murrieta, the
 City of Temecula and Riverside County Flood
 18 Control and Water Conservation District within
 the Santa Margarita Watershed.
 19

Hearing Date: February 11, 2004

Agenda Item No. 12

**EVIDENTIARY OBJECTIONS OF THE
 CITY OF TEMECULA TO DOCUMENTS
 PURPORTING TO SUPPORT
 TENTATIVE ORDER NO. R9-2004-01**

20 **PRELIMINARY STATEMENT**

21 The City of Temecula ("City") hereby objects to certain documents referenced in the
 22 Tentative Fact Sheet/Technical Report for the "SDRWQCB Tentative Order No. R9-2004-001,
 23 Municipal Storm Water Permit for the County of Riverside, the City of Murrieta, the City of
 24 Temecula, and the Riverside County Flood Control and Water Conservation District within the
 25 Santa Margarita Watershed (Upper Santa Margarita Watershed)" ("Tentative Permit") and upon
 26 which the City believes staff of Regional Board are citing as factual support for the Tentative
 27 Permit. These objections are made pursuant to Government Code § 11513, as specifically
 28 incorporated by referenced at 23 California Code of Regulations § 648.51 ("Rules of

**EVIDENTIARY OBJECTIONS OF THE CITY OF TEMECULA TO DOCUMENTS PURPORTING TO SUPPORT
 TENTATIVE ORDER NO. R9-2004-01**

Evidence”), as well as 23 California Code of Regulations §648.3.

EVIDENTIARY OBJECTIONS

The State Water Resources Control Board’s regulations governing adjudicative proceedings, such as a Regional Board’s adoption of Waste Discharge Requirements, provide that such proceedings will be conducted in accordance with the provisions and rules of evidence set forth in Government Code § 11513. (*See*, 23 C.C.R. § 648.5.1). These same regulations provide that “hearsay evidence is admissible subject to the provisions of Government Code § 11513.” *Id.* Government Code § 11513(c) in relevant part provides that: “any relevant evidence shall be admitted *if it is the sort of evidence on which responsible persons are accustomed to rely* in the conduct of serious affairs.” Govt. Code § 11513(c)(emphasis added). Evidence must still be “relevant and reliable.” *Aengst v. Bd. of Medical Quality Assurance* (1980) 110 Cal.App.3d 275.

As an initial matter, before any evidence can be admitted, the proponent must first lay a foundation for its admission. *See, People v. Haslouer* (1978) 79 Cal.App.3d 818, 825. Establishing a foundation for the evidence which a proponent seeks to admit is a prerequisite for the admission of any evidence. *People v. Morales* (1926) 77 Cal.App. 483, 492.

Most of the documents listed in Staff’s Technical Report have little, if any, relevance to the conditions of the Upper Santa Margarita Watershed, and are not relevant. In order for evidence to be relevant, the evidence must demonstrate “same or similar” conditions. *Hercules Powder Co. v. Automatic Sprinkler Corp. of America* (1957) 151 Cal.App.2d 387, 400.

According to this standard, the relevancy of most, if not all, of the reports and other documents referenced in the Tentative Fact Sheet are, at best, questionable and cannot be appropriately relied upon by the Regional Board in its adoption of the Tentative Permit. Notably, only four of the arguments and reports sorted in the fact sheet deal with the unique hydrology and conditions of that portion of the Santa Margarita Watershed that is the subject of the Permit.

As discussed below, the City also objects to many of the listed documents because the Regional Board has failed to establish an evidentiary foundation for these documents. Absent the laying of such a foundation, there is no basis for placing these documents into the administrative record.

The City also objects to the references to most, if not all, of the reports and documents contained in the Tentative Fact Sheet, on the grounds that these documents constitute inadmissible hearsay and are, therefore, inadmissible, pursuant to the hearsay provisions of Government Code § 11513(d).

While hearsay evidence "may be used for the purpose of supplementing or explaining other evidence. . . [it] shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions." Accordingly, the proponent of such evidence bears the burden of demonstrating that one of the hearsay exceptions is applicable to a given piece of evidence and it should, therefore, be admitted. *People v. Herrera* (2000) 83 Cal.App.4th 46.

The City also objects to the inclusion of the identified documents referenced in the Tentative Fact sheet, because of the Regional Board's failure to comply with the requirements at 23 California Code of Regulations §648.3 ("Evidence by Reference").

Section §648.3 provides as follows:

Public records of the Board that are relevant to the subject of the hearing, and books, reports, and other evidence that have been prepared and published by a public agency, *if otherwise admissible*, may in the discretion of the Board be received in evidence as exhibits by reference without the necessity of supplying copies to the board and other parties, provided the original or a copy is in the possession of the Board and the specific file folder or other exact location where it can be found is identified. *The party offering an exhibit by reference shall designate the particular portions on which the party relies.* Each exhibit shall be appropriately identified and designated in the record as an exhibit of the party offering the exhibit or an exhibit of Board staff.¹ (Emphasis added.)

¹ Under the Government Code "Public Records" are, in relevant part, defined as: "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." Gov't Code §6252(e).

1 Nowhere in the Regional Board's Tentative Fact Sheet has any effort been made to
 2 identify the "particular portions on which" the Regional Board is relying. Accordingly, until
 3 such time as the Regional Board identifies the specific portions of the documents upon which it
 4 is relying, they should not be included as part of the administrative record in this proceeding.

5 The City further objects to many of the alleged "scientific reports" and similar documents
 6 listed below because, to the extent that such evidence is scientific, and might be deemed expert in
 7 nature, the Regional Board has failed to lay any evidentiary foundation for its admission. Under
 8 California law, the standard for admissibility of expert testimony is whether such testimony
 9 "concerns a subject which is sufficiently beyond the scope of common experience that the
 10 opinion of an expert would assist the trier of fact." *People v. Johnson* (1993) 14 Cal.App.4th
 11 776. However, a prerequisite for the admissibility of the expert's opinion testimony or report is
 12 that it is of a type which may reasonably be relied upon. Evidence Code § 801(b). Expert reports
 13 and testimony must also be relevant. *See, People v. Gomez* (1999) 72 Cal.App.4th 403, 415.

14 Here, however, the Regional Board has made no effort to show just how, precisely,
 15 reports and other documents referenced in the Tentative Fact Sheet are the product of either
 16 reliable scientific or expert opinion. Nor, as noted above, has the Regional Board shown how
 17 these documents which do not relate to the watershed are relevant. Accordingly, as indicated
 18 below, the City objects to certain items listed on the Tentative Fact Sheet as being objectionable
 19 and incompetent scientific or expert evidence and requests it to be struck:

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OBJECTIONS TO DOCUMENTS RELIED UPON IN TENTATIVE FACT SHEET

1. Abel, PD. 1996. Water Pollution Biology.

Objections:

- (a) Hearsay;
- (b) Lack of foundation; and
- (c) Relevance.

2. Bay Area Storm Water Management Agencies Association. 1999. "Start at the Source." Forbes Custom Publishing.

Objections:

- (a) Hearsay;
- (b) Lack of foundation;
- (c) Relevance; and
- (d) Incompetent expert evidence.

3. Bay, Jones, Schiff. 1999. Study of the Impact of Storm Water Discharge on Santa Monica Bay.

Objections:

- (a) Hearsay;
- (b) Lack of foundation;
- (c) Relevance; and
- (d) Incompetent expert evidence.

4. Bay, Steven M., Schiff, Kenneth C. and Stransky, Christopher. 2001. *Characterizations of Storm Water Toxicants from an Urban Watershed to Fresh Water and Marine Organisms. Southern California Coastal Water Research Project. Annual Report 1999 to 2000.*

Objections:

- (a) Hearsay;
- (b) Lack of foundation;

(c) Relevance; and

(d) Incompetent expert evidence.

5. Brown, Ted, Caraco, Deb. 2001. Channel Protection. Water Resources Impact.

Objections:

(a) Hearsay;

(b) Lack of foundation;

(c) Relevance; and

(d) Incompetent expert evidence.

6. Center for Transportation and the Environment ("CTE"). 1998. UNC-Charlotte Researchers Complete CTE Project to Characterize and Estimate Pollutant Loading for Highway Runoff in Southeastern U.S. CTE News and Notes, Volume 5, No. 3/4.

Objections:

(a) Hearsay;

(b) Lack of foundation;

(c) Relevance; and

(d) Incompetent expert evidence.

7. Center for Watershed Protection. July 1996. Environmental Indicators to Assess Storm Water Control Programs and Practices, Final Report. Indicator Profile No. 25.

Objections:

(a) Hearsay;

(b) Lack of foundation;

(c) Relevance; and

(d) Incompetent expert evidence.

8. Center for Watershed Protection, 1998. Better Site: A Handbook for Changing Development Rules in Your Community.

Objections:

(a) Hearsay;

(b) Lack of foundation; and

(c) Relevance.

9. City of Long Beach of 2001. Storm Water Monitoring Report. (2000-2001),

Kinetic Laboratories, Inc.

Objections:

(a) Hearsay;

(b) Lack of foundation;

(c) Relevance; and

(d) Incompetent expert evidence.

10. District. 1993. Reconnaissance Survey Program, Appendix A.

Objections:

(a) Hearsay;

(b) Lack of foundation; and

(c) Relevance.

11. District. 1994. Consolidated Program for Water Quality Monitoring.

Objections:

(a) Hearsay;

(b) Lack of foundation; and

(c) Relevance.

12. EPA. 1992a. Guidance Manual for the Preparation of Part II of the NPDES Permit Applications for Discharges from Municipal Separate Storm Sewer Systems. Washington D.C. EPA/833-B-92-002.

Objections:

(a) Hearsay;

(b) Lack of foundation; and

(c) Relevance.

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13. EPA. 1992b. NPDES Storm Water Sampling Guidance Document. EPN833-B-92-001.

Objections:

- (a) Hearsay;
- (b) Lack of foundation; and
- (c) Relevance.

14. EPA. 1993a. Investigation of Inappropriate Pollutant Entries into Storm Drainage Systems: A Users Guide. Washington D.C. EPA 600-R-92-238

Objections:

- (a) Hearsay;
- (b) Lack of foundation; and
- (c) Relevance.

15. EPA. 1993b. Results of the Nationwide Urban Runoff Program, Volume 1 — Final Report.

Objections:

- (a) Hearsay;
- (b) Lack of foundation; and
- (c) Relevance.

16. EPA. 1993c. Methods for Aquatic Toxicity Identification Evaluations: Phase II Toxicity Identification Procedures for Samples Exhibiting Acute and Chronic Toxicity. EPA-600-R-92-080.

Objections:

- (a) Hearsay;
- (b) Lack of foundation; and
- (c) Relevance.

17. EPA. 1996a. Regions 9 & 10 Guidance for Implementing Whole Effluent Toxicity Testing Programs, Final. Debra Denton and Madorina Narvaez.

Objections:

- (a) Hearsay;
- (b) Lack of foundation; and
- (c) Relevance.

18. EPA. 1996b. Permit Writers' Manual

Objections:

- (a) Hearsay;
- (b) Lack of foundation; and
- (c) Relevance.

19. EPA. 1996c. Interpretive Policy Memorandum on Reapplication Requirements for Municipal Separate Storm Sewer Systems.

Objections:

- (a) Hearsay;
- (b) Lack of foundation; and
- (c) Relevance.

20. EPA. 1998a. Jan 21, 1998 correspondence, "SWRCB/OCC File A-1041 for Orange County" from Alexis Strauss to Walt Petit.

Objections:

- (a) Hearsay;
- (b) Lack of foundation; and
- (c) Relevance.

21. EPA. 1998b. March 17, 1998 correspondence from Alexis Strauss to Walt Petit.

Objections:

- (a) Hearsay;
- (b) Lack of foundation; and
- (c) Relevance.

22. EPA. 1999a. 40 CFR Parts 9,122,123 and 124 NPDES Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges. 64 Fed. Reg. 68725.

Objections:

- (a) Hearsay;
- (b) Lack of foundation; and
- (c) Relevance.

23. EPA. 1999b. Part II. 40 CFR Parts 9, 122, 123, and 124. National Pollutant Discharge Elimination System — Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges; Final Rule. Federal Register. Washington D.C.

Objections:

- (a) Hearsay;
- (b) Lack of foundation; and
- (c) Relevance.

24. EPA. 1999c. Storm Water O&M Fact Sheet, Catch Basin Cleaning. EPA 832-F-99-011.

Objections:

- (a) Hearsay;
- (b) Lack of foundation; and
- (c) Relevance.

25. EPA. 1999d. Fact Sheet for NPDES Permit No. CAS0108766.

Objections:

- (a) Hearsay;
- (b) Lack of foundation; and
- (c) Relevance.

26. EPA. 1999e. Preliminary Data Summary of Urban Storm Water Best Management Practices. EPA 821-R-99-012.

Objections:

- (a) Hearsay;
- (b) Lack of foundation; and
- (c) Relevance.

27. EPA. 2000a. EPA Administered Permit Programs: The National Pollutant Discharge Elimination System. Code of Federal Regulations, Vol. 40, Part 122. EPA, Washington D.C.

Objections:

- (a) Hearsay;
- (b) Lack of foundation; and
- (c) Relevance.

28. EPA. 2000b. Quality of Our Nation's Waters: Summary of the National Water Quality Inventory 1998 Report to Congress — USEPA 841-S-00-001; Water Quality Conditions in the United States: Profile from the 1998 National Water Quality Inventory Report to Congress — USEPA 841-F-00-006.

Objections:

- (a) Hearsay;
- (b) Lack of foundation; and
- (c) Relevance.

29. EPA. 2000c. Storm Water Phase II Compliance Assistance Guide. Washington D.C. EPA 833-R-00-002.

Objections:

- (a) Hearsay;
- (b) Lack of foundation; and
- (c) Relevance.

30. EPA. 2000d. Measurable Goals Guidance for Phase II Small MS4s.
<http://cfpub.epa.gov/npdes/stormwater/measurablegoals/index.cfm>.

Objections:

- (a) Hearsay;
- (b) Lack of foundation; and
- (c) Relevance.

31. EPA. 2002. Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms, Fifth Edition. EPA-821-R-02-012.

Objections:

- (a) Hearsay;
- (b) Lack of foundation; and
- (c) Relevance.

32. Federal Highway Administration (FHA). 1990. "Pollutant Loading and Impacts from Highway Stormwater Runoff." Volume 3; Analytical Investigation and Research Report.

Objections:

- (a) Hearsay;
- (b) Lack of foundation; and
- (c) Relevance.

33. Haile, R.W., et al. 1996. An Epidemiological Study of Possible Adverse Health Effects of Swimming in Santa Monica Bay. Santa Monica Bay Restoration Project.

Objections:

- (a) Hearsay;
- (b) Lack of foundation;
- (c) Relevance; and
- (d) Incompetent expert evidence.

34. Jenks, James. 2002. Santa Margarita River Watershed Annual Watermaster Report: Water Year 2000-2001.

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Objections:

- (a) Hearsay;
- (b) Lack of foundation; and
- (c) Relevance.

35. Lee, G.Fred, PhD, Jones-Lee, Anne, PhD. 2000. Assessing and Managing Water Quality Impacts of Urban Stormwater Runoff. G. Fred Lee & Associates. El Macero, CA.

Objections:

- (a) Hearsay;
- (b) Lack of foundation;
- (c) Relevance; and
- (d) Incompetent expert evidence.

36. Los Angeles and San Diego Regional Water Quality Control Boards (LA and SDRWQCB5). 2001. Retail Gasoline Outlets: New Development Design Standards for Mitigation of Storm Water Impacts.

Objections:

- (a) Hearsay;
- (b) Lack of foundation; and
- (c) Relevance.

37. Los Angeles Regional Water Quality Control Board (LARWQCB). 2001a. Fact Sheet/Staff Report for the Los Angeles Municipal Storm Water NPDES Permit (CASOO400I) Order No. 01-182).

Objections:

- (a) Hearsay;
- (b) Lack of foundation; and
- (c) Relevance.

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Objections:

- (a) Hearsay;
- (b) Lack of foundation;
- (c) Relevance; and
- (d) Incompetent expert evidence.

42. Minan, John H. Winter 2003. Municipal Storm Water Permitting in California. San Diego Law Review, Volume 40, No. 1.

Objections:

- (a) Hearsay;
- (b) Lack of foundation; and
- (c) Relevance.

43. Natural Resources Defense Council (NRDC). 1999. Clean Water & Oceans: Water Pollution: In Depth Report Stormwater Strategies, Community Responses to Runoff Pollution.

Objections:

- (a) Hearsay;
- (b) Lack of foundation;
- (c) Relevance; and
- (d) Incompetent expert evidence.

44. Nonpoint Source News Notes. 2000. A Survey of Residential Nutrient Behavior. Permittees. March 1993. Santa Margarita Regional Drainage Area Management Plan.

Objections:

- (a) Hearsay;
- (b) Lack of foundation; and
- (c) Relevance.

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1 45. San Diego Co-Permittees. 2002. Model Standard Urban Storm Water Mitigation
2 Plan for San Diego County, Port of San Diego, and Cities in San Diego County. Approved by
3 the SDRWQCB on June 12, 2002.

4 Objections:

- 5 (a) Hearsay;
6 (b) Lack of foundation; and
7 (c) Relevance.

8 46. Schueler, T.R. 1994. The Importance of Imperviousness. Watershed Protection
9 Techniques. As cited in 64 Fed. Reg. 68725.

10 Objections:

- 11 (a) Hearsay;
12 (b) Lack of foundation;
13 (c) Relevance; and
14 (d) Incompetent expert evidence.

15 47. Schueler, T.R. 1987. Controlling Urban Runoff: A Practical Manual for Planning
16 and Designing Urban BMPs. Metropolitan Washington Council of Governments.

17 Objections:

- 18 (a) Hearsay;
19 (b) Lack of foundation;
20 (c) Relevance; and
21 (d) Incompetent expert evidence.

22 48. Schueler, T.R. 2000. Center for Watershed Protection. Assessing the Potential
23 for Urban Watershed Restoration, Article 142 in the Protection.

24 Objections:

- 25 (a) Hearsay;
26 (b) Lack of foundation;
27 (c) Relevance; and
28

(d) Incompetent expert evidence.

49. SDRWQCB. 2001a. Fact Sheet/Technical Report for SDRWQCB Order No.

2001-01.

Objections:

(a) Hearsay;

(b) Lack of foundation; and

(c) Relevance.

50. SDRWQCB. 2001b. Staff Report for Standard Urban Storm Water Mitigation Plans and Numerical Sizing Criteria for Best Management Practices.

Objections:

(a) Hearsay;

(b) Lack of foundation; and

(c) Relevance.

51. SDRWQCB. 2001c. Response in Opposition to Petitions for Review of California Regional Water Quality Control Board San Diego Region Order No. 2001-01 — NPDES Permit No. CAS0108758 (San Diego Municipal Storm Water Permit).

Objections:

(a) Hearsay;

(b) Lack of foundation; and

(c) Relevance.

52. SDRWQCB. 2002a. Fact Sheet/Technical Report for SDRWQCB Order No. R9-

2002-0001.

Objections:

(a) Hearsay;

(b) Lack of foundation; and

(c) Relevance.

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53. SDRWQCB. 2002b. November 6, 2002 correspondence, "Order No. 98-02 (NPDES No. CAS01 08766) 2001-2002 Annual Progress Report and Notice of Violation No. R9-2002-360."

Objections:

- (a) Hearsay;
- (b) Lack of foundation; and
- (c) Relevance.

54. SDRWQCB. 2002c. December 11, 2002 correspondence letter, "Riverside County (Santa Margarita Watershed) MS4 Program Evaluation Report (Order No. 98-02, NPDES Permit No. CAS010766)."

Objections:

- (a) Hearsay;
- (b) Lack of foundation; and
- (c) Relevance.

55. SDRWQCB. 2002d. April 17, 2002 correspondence letter, "Annual Reporting for Order No. 98-02 (Staff Analysis of the 2000-2001 Annual Report and CWC Section 13267 Directive for Additional Reporting Requirements for Riverside County, Santa Margarita Watershed MS4.

Objections:

- (a) Hearsay;
- (b) Lack of foundation; and
- (c) Relevance.

56. SDRWQCB. 2002e. July 19, 2002 correspondence letter, "Application for Renewal of MS4 NPDES Permit No. CAS0108766 (including Specifications for Updating the Storm Water Management Plan for the Santa Margarita Watershed in Riverside County for Renewal of Order No. 98-02)."

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Objections:

- (a) Hearsay;
- (b) Lack of foundation; and
- (c) Relevance.

57. SDRWQCB. 2002f. March 29, 2002 correspondence letter, "Municipal Storm Water Permit for Riverside County, The Santa Margarita Watershed."

Objections:

- (a) Hearsay;
- (b) Lack of foundation; and
- (c) Relevance.

58. SDRWQCB. 2003b. March 6, 2003 correspondence, "California Water Code Section 13225 Directive for Assessing Water Quality Impacts of Urban Runoff in the Santa Margarita Watershed."

Objections:

- (a) Hearsay;
- (b) Lack of foundation; and
- (c) Relevance.

59. Shapiro. 1991. Refuge in an urbanized land, the Santa Margarita River: cultural and natural resource value. Santa Margarita River Foundation, Fallbrook, CA. As referenced in Stein 1998.

Objections:

- (a) Hearsay;
- (b) Lack of foundation;
- (c) Relevance; and
- (d) Incompetent expert evidence.

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60. Stein, Eric and Ambrose, Richard. 1998. "Cumulative Impacts of Section 404 Clean Water Act Permitting on the Riparian Habitat of the Santa Margarita, California Watershed". Wetlands, Vol. 18, No. 3.

Objections:

- (a) Hearsay;
- (b) Lack of foundation;
- (c) Relevance;
- (d) Incompetent expert evidence.

61. Stormwater Monitoring Coalition of Southern California (SMC). 2003. Annual Monitoring Report 2002-2003.

Objections:

- (a) Hearsay;
- (b) Lack of foundation;
- (c) Relevance;
- (d) Incompetent expert evidence.

62. Superior Court of California, County of San Diego. 2003. Case No. G1C780263, Building Industry Association of San Diego County, et al., v. State Water Resources Control Board, et al.

Objections:

- (a) Hearsay;
- (b) Lack of foundation; and
- (c) Relevance.

63. SWRCB. 1993. February 11, 1993 memo entitled "Definition of Maximum Extent Practicable" by Elizabeth Jennings, Senior Staff Counsel, SWRCB.

Objections:

- (a) Hearsay;
- (b) Lack of foundation; and

1 (c) Relevance.

2 64. SWRCB, Division of Water Quality. 1994. Urban Runoff Technical Advisory
3 Committee Report and Recommendations. Nonpoint Source Management Program.

4 Objections:

5 (a) Hearsay;

6 (b) Lack of foundation; and

7 (c) Relevance.

8 65. SWRCB. 1999a. Order WQ 99-05. Own Motion of the Petition of
9 Environmental Health

10 Objections:

11 (a) Relevance.

12 66. Coalition to Review Waste Discharge Requirements Order No. 96-03, NPDES
13 Permit No. CAS0108740 for Storm Water and Urban Runoff from the Orange County Flood
14 Control District and the Incorporated Cities of Orange County Within the San Diego Region,
15 Issued by the California Regional Water Quality Control Board, San Diego Region.

16 Objections:

17 (a) Hearsay;

18 (b) Lack of foundation; and

19 (c) Relevance.

20 67. SWRCB. 1999b. October 14, 1999 memo, "Receiving Water Limitations in
21 Municipal Storm Water Permits."

22 Objections:

23 (a) Hearsay;

24 (b) Lack of foundation; and

25 (c) Relevance.

26 68. SWRCB and California Coastal Commission. 2000. Plan for California's
27 Nonpoint Source Pollution Control Program.

Objections:

- (a) Hearsay;
- (b) Lack of foundation; and
- (c) Relevance.

69. SWRCB. 2000a. Policy for Implementation of Toxics Standards for Inland Surface Water, Enclosed Bays, and Estuaries of California. State Implementation Plan (SIP).

Objections:

- (a) Hearsay;
- (b) Lack of foundation; and
- (c) Relevance.

70. SWRCB. 2000b. Order WQ 2000-11. In the Matter of the Petitions of the Cities of Bellflower, et al., the City of Arcadia, and Western States Petroleum Association, Review of January 26, 2000 Action of the Regional Board and Actions and Failures to Act by the California Regional Water Quality Control Board, Los Angeles Region and its Executive Officer, Pursuant to Order No. 96-054, Permit for Municipal Storm Water and Urban Runoff Discharges within Los Angeles County.

Objections:

- (a) Hearsay;
- (b) Lack of foundation; and
- (c) Relevance.

71. SWRCB. 2001. Order WQ 2001-15. In the Matter of Petitions of Building Industry Association of San Diego County and Western States Petroleum Association: For Review of Waster Discharge Requirements Order No.2001-01 for Urban Runoff from San Diego County [NPDES No. CAS0108758] Issued by the SDR WQCB.

Objections:

- (a) Hearsay;
- (b) Lack of foundation; and

(c) Relevance.

72. SWRCB. 2003a. Order No. 2003-0005-DWQ, NPDES Permit No. CAS000004, Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems.

Objections:

- (a) Hearsay;
- (b) Lack of foundation; and
- (c) Relevance.

73. SWRCB. 2003b. Monitoring List 2002.

http://www.swrcb.ca.gov/tmdl/docs/2002_mon_list020403.pdf

Objections:

- (a) Hearsay;
- (b) Lack of foundation; and
- (c) Relevance.

74. US Army Corps of Engineers, Los Angeles District. September 2000. Murrieta Creek Flood Control Project Environmental Impact Statement/Environmental Impact Report, Appendix I.

Objections:

- (a) Hearsay;
- (b) Lack of foundation;
- (c) Relevance;
- (d) Incompetent expert evidence.

75. White, Micheal D., Greer, Keith A. July 2002. The San Diego Foundation. The Effects of Watershed Urbanization on Stream Hydrologic Characteristics and Riparian Vegetation of Los Penasquitos Creek, California.

Objections:

- (a) Hearsay;

- (b) Lack of foundation;
- (c) Relevance;
- (d) Incompetent expert evidence.

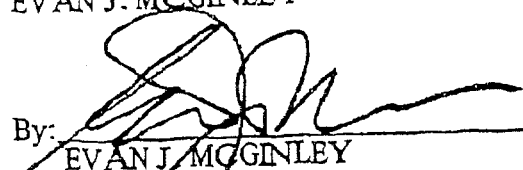
76. Yaggi, Marc, Senior Attorney, Riverkeeper. 2001. Helping to Reduce Pollution in NYC Drinking Water. Croton Clean Water Coalition Newsletter, Issue #6.

Objections:

- (a) Hearsay;
- (b) Lack of foundation;
- (c) Relevance;
- (d) Incompetent expert evidence.

DATED: February 10, 2004

RICHARDS, WATSON & GERSHON
A Professional Corporation
PETER M. THORSON
JOHN J. HARRIS
EVAN J. MCGINLEY

By: 
EVAN J. MCGINLEY
Attorneys for Defendant
CITY OF TEMECULA

PROOF OF SERVICE

I, Lillian Dominguez declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Richards, Watson & Gershon, 355 South Grand Avenue, 40th Floor, Los Angeles, California 90071. On February 10, 2004, I served the within documents:

EVIDENTIARY OBJECTIONS OF THE CITY OF TEMECULA TO
DOCUMENTS PURPORTING TO SUPPORT TENTATIVE ORDER R9-2004-
01

☒ by causing facsimile transmission of the document(s) listed above from (213) 626-0078 to the person(s) and facsimile number(s) set forth below on this date before 5:00 P.M. This transmission was reported as complete and without error. A copy of the transmission report(s), which was properly issued by the transmitting facsimile machine, is attached. Service by facsimile has been made pursuant to a prior written agreement between the parties.

☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below. I am readily familiar with the firm's practice for collection and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing contained in this affidavit.

☐ by placing the document(s) listed above in a sealed envelope and affixing a prepaid air bill, and causing the envelope to be delivered to a n agent for delivery, or deposited in a box or other facility regularly maintained by, in an envelope or package designated by the express service carrier, with delivery fees paid or provided for, addressed to the person(s) at the address(es) set forth below.

John Robertus
Executive Officer
California Regional Water Quality Control
Board - San Diego Region
9174 Skypark Court, Suite 100
San Diego, CA 92123
Fax (858) 571-6972
Telephone (858) 467-2357

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 10, 2004.


Lillian Dominguez

MCWD**MURRIETA COUNTY WATER DISTRICT**

42290 Ivy Street
P.O. Box 949
Murrieta, CA 92564

Phone: (909) 677-7667
Fax: (909) 677-5499

email@murrietawater.com

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February 19, 2004

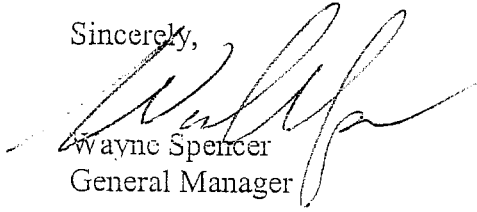
Mr. Michael McCann, P.E.
Calif. Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

Dear Mr. McCann,

I spoke with you during the MPDES workshop on January 23, 2004, about certain provisions listed in the proposed new MS4 permit. Specifically, on page 6 of 31, paragraph B.2 lists non-storm water discharges that are not prohibited. Included in that list are items (k) and (m) that our District has a permit for. It is my understanding that this paragraph means that permits for items (k) and (m) will no longer be required. This would be a great benefit to us and other agencies that have to renew, and pay for, permits for this type of discharge. If this is correct will there be a statement from the SDRWQCB to agencies relieving them of this requirement or does the MS4 assume that status? Please let me know if I am correct in my interpretation of the paragraph in question.

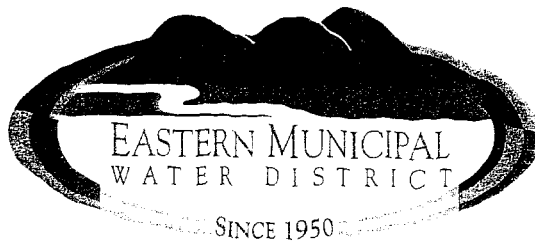
Thank you for your time and prompt answer.

Sincerely,


Wayne Spencer
General Manager

W. McCann 2/23/04
Bob Morris

Bob NEED TO
RESPOND TO
THIS
QUESTION.



2004 1000 -8 10 10 10

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Metropolitan Water
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Joseph J. Kuebler, CPA

Legal Counsel

Redwine and Sherrill

March 3, 2004

Ms. Megan Quigley
Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123

Dear Ms. Quigley:

We appreciate the opportunity to provide our review comments of the Tentative Order No. R9-2004-001, Municipal Separate Storm Sewer System (MS4) Waste Discharge Requirements for the County of Riverside and associated cities on the Santa Margarita River. The following comments are submitted for your consideration in the development of the subsequent draft of Tentative Order No. R9-2004-001. Our primary concerns are related to storm water disposal and the new requirements for industrial facilities currently covered by the State Water Resources Control Board General Industrial permit to also be included in the revised MS4 permit.

On January 23, 2004, we attended a public workshop for the tentative order. At the workshop, there was discussion related to the on-site treatment of storm water and it was suggested that the wastewater could be directed to the local sanitary sewer system. This suggestion raised a serious concern for EMWD. We currently have an ordinance in place that prohibits the discharge of storm water or runoff into the sewer system and limitations on other waste streams to ensure that the wastewater treatment plant can meet permit limitations. Our treatment facilities are designed for municipal wastes and its associated flows. In addition, storm water events can have significant flows and our treatment plants are not designed to take such flows and retain the ability to meet permit limitations and capacity limitations. Please be advised of the limitations associated with the use of the local sanitary sewer systems for disposal of storm water and its potential waste stream.

The existing MS4 permit does not currently regulate the storm water activities associated with Eastern Municipal Water District's (EMWD) Temecula Valley Regional Water Reclamation Facility (TVRWRF) as this

facility falls under the jurisdiction of the State Water Resources Control Board's General Industrial Permit. The draft Tentative Order requires each municipal permittee to provide oversight of industrial facilities. Section D gives the permittee the legal authority to control such discharges and Section H.2 specifies the industrial/commercial facilities requirements. This authority includes issuance of permits, inspections and enforcement over storm water discharges. From the discussion at the workshop and phone conversations, it is not clear whether a special district such as EMWD's TVRWRF would be included as an industrial facility under this order. EMWD as a Special District, has the authority to provide water and wastewater services to the public. Under Article 6 of Government Code Section 53091, the District is not subject to local building ordinances of a county or city for the location or construction of facilities required for the production, generation, storage or transmission of water and wastewater. This government code conflicts with the authority given to the permittees over a site, such as TVRWRF. EMWD requests clarification on whether or not a special district is regulated by the Tentative Order.

Also as a general comment, the tentative order is duplicative where industrial facilities will be required to comply with the General Industrial permit and the municipal permittee requirements. During the February 11, 2004 public hearing, testimony was given that there was no intention of duplicating efforts, specifically inspections, at these sites. EMWD is opposed to dual permitting, inspections and enforcement and recommends that the tentative order be revised to have the legal authority over the industrial sites be administered by the Regional Board or the municipal permittee, not both. EMWD prefers to retain the industrial program in its current state with oversight by the Regional Board of the General Industrial permit.

Thank you for the opportunity to provide comment on the draft Tentative Order R9-2004-001, should you have any questions regarding these comments please contact Roger Turner at (909) 926-3777, ext. 6345.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Pack', written over a horizontal line.

Anthony J. Pack
General Manager

San Diego Bay Council

A coalition of San Diego environmental organizations dedicated to protection and restoration of San Diego's coastal water resources

March 4, 2004

Chairman John Minan and Regional Board members
9174 Sky Park Court Suite 100
San Diego, CA 92123

Dear Chairman Minan and Board members:

The member organizations of the San Diego Bay Council wish to express our strong support for the Tentative Order R9-2004-001, NPDES CAS0108766 for discharges for urban runoff from the MS4 draining the County of Riverside et al. This permit, modeled on the proven and successful permits of Orange County and San Diego County, is a much needed improvement for the surface and ground waters of Riverside County.

Contrary to discharger assertions, the requirements of the new Riverside MS4 permit are clearly authorized under both the Federal Clean Water Act and California's Porter-Cologne Act. But, because the proposed permit requirements mirror those in Orange and San Diego Counties, the permit constitutes the Maximum Extent Practicable standard required by the federal Clean Water Act, and the Board need not even look to state law for authorization. In fact, we do not believe the Board has discretion to require anything less of the Riverside Co-permittees.

The need for the permit is urgent, as the dischargers proved again and again in testimony that they have not yet taken the requirements under their 1990 or 1998 permits seriously. The requirements in the tentative Order are fair, consistent, and will be effective when implemented.

Further, the deadlines in the permit are more than reasonable given the number of model programs already developed by San Diego and Orange County. The Board should also note, many of the elements of the proposed permit are already required under existing or previous permits.

The Regional Board must recognize the significant problem in Riverside County. Our representative at the recent hearing was dismayed at the amazingly poor understanding of urban runoff issues demonstrated repeatedly by the Co-permittee representatives. Claims that there was no urban runoff in dry weather, that discharge of polluted flows into tributaries or ephemeral streams was of no concern, that no water contact is occurring in the Santa Margarita River, and that somehow Riverside parking lots and RGOs do not concentrate pollutants as they do everywhere else in the world indicate the need for substantially more oversight on the part of the Regional Board. It is also clear that there is a dire need for additional monitoring of this region—an issue that will be addressed by the permit renewal.

The claims of excessive costs by the dischargers were not compelling. This region has added thousands of new homes and hundreds of new businesses. They expect to add thousands more. The requirement to identify a funding source for storm water programs has been in effect since 1990. If there is not sufficient funds, then the governmental entities have inadequately collected developers fees on the new development. Further, it is well established in federal law that lack of funding does not excuse compliance with the Clean Water Act. Storm water pollution prevention is a necessary part of development infrastructure as is earthquake building standards and many other development requirements. The Tentative Order does a good job ensuring that actions are taken in advance or along with development when such actions are least expensive and most effective.

On the issue of "flexibility" and reduced inspections for high priority construction sites, we ask you to examine this request very critically. It is unclear to us why the Regional Board would reduce the number of inspections in such a rapidly developing area. Our concern focuses on the fact that the request from the inspectors may come from a lack of needed staffing rather than a plan for improved compliance through flexibility. We would ask the Board to examine this issue closely to ensure that protection is not reduced in the very area needing it the most. In San Diego County, the Board is well aware that despite increased enforcement efforts, virtually every jurisdiction experiencing significant construction has numerous sites out of compliance during every single storm event.

The Santa Margarita Watershed, encompassing both the Riverside and San Diego Counties, provides critical habitat for several endangered species. In February 2001, the U.S. Fish and Wildlife Service designated eight counties in California, including Riverside and San Diego as critical habitat for the endangered species, the arroyo toad. Another endangered species, the steelhead trout, has been found in the Santa Margarita River. This Tentative Order will play a vital role in protecting this watershed. The watershed protection is not only essential in conserving the inland riparian habitat but also the ocean. Both the Pew Oceans Commission and the U.S. Commission on Ocean Policy stress the need to have sound watershed management programs to conserve the ocean natural resources.

In closing, this region has many of its beautiful rivers intact. For this, the local governments deserve credit. However, these jewels will be tarnished if the actions required under the tentative order are not pursued diligently. If the Regional Board fails to adopt the Tentative Order, in several years officials in Riverside County will be seeking millions of dollars to restore the Santa Margarita just as the officials in San Diego are seeking millions to restore the beleaguered San Diego River. This is our chance to get ahead of this curve.

We strongly urge the Regional Board to adopt this permit at your next meeting so that quick progress can be made in the compliance of entities in Riverside County.

Sincerely,

Laura Hunter
Environmental Health Coalition

Bruce Reznik
San Diego Baykeeper

Jim Peugh
San Diego Audubon Society

Marco Gonzalez
Surfrider Foundation, San Diego Chapter

Ed Kimura
San Diego Chapter of the Sierra Club



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

In Reply
Refer to: WTR-5

MAR 05 2004

John Robertus
Executive Officer
California Regional Water Quality Control Board,
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

Re: Tentative NPDES Permit No. CAS0108766 for Riverside County and Co-Permittees

Dear Mr. Robertus:

The purpose of this letter is to provide comments, per a request from your staff, on some of the issues which have been raised by Riverside County and its co-permittees, and the Building Industry Association (BIA) concerning proposed NPDES permit No. CAS0108766. This permit would authorize storm water discharges from the municipal separate storm sewer system (MS4) operated by Riverside County and its co-permittees in the Santa Margarita Watershed.

Our specific comments on the proposed permit and the issues which have been raised are enclosed. Overall, we believe that the permit is fully consistent with the Clean Water Act (CWA), EPA regulations, and is appropriate for the Santa Margarita Watershed; aside from some relatively minor suggestions noted in our comments, we would urge the Board to adopt the permit largely as proposed.

Thank you for the opportunity to comment on the proposed permit. Should you have any questions regarding this matter, please refer your staff to Eugene Bromley of the CWA Standards and Permits Office at (415) 972-3510.

Sincerely,

Doug Eberhardt, Manager
CWA Standards and Permits Office
Water Division

Enclosure

cc: Megan Quigley, San Diego Regional Board

ENCLOSURE - Region 9 Comments on Proposed NPDES Permit No. CAS0108766 for
Riverside County and Co-Permittees

1) Compliance Schedule for SUSMP Implementation

Commenters requested additional time to implement the SUSMP requirements. One commenter requested an extension from 365 days to 640 days. Another commenter noted that in San Diego County, the permittees were given 1 ½ years to implement similar requirements; also the Orange County permit (Santa Ana Board) provided roughly 2 years.

The fact sheet notes that model programs were provided to the Riverside County permittees and that this should reduce the time necessary for these permittees to implement their program as compared to the permittees in the other Counties. Nevertheless, Riverside County has argued that it is still necessary to consider the unique characteristics of the Santa Margarita Watershed in developing an appropriate program. As a result, we would suggest allowing some additional time for the SUSMP development - perhaps 1½ years would be a reasonable compromise which would not significantly delay the program, but would provide a little extra time to develop an appropriate program.

2) Vested Rights for Property Development

Commenters have argued the Regional Board must consider potential conflicts between permit requirements (primarily the SUSMPs requirements) and the vested right of a developer to complete a project as designed if the project had been approved prior to the new permit requirements. We believe the permit adequately responds to this issue in Part F.2.b which provides that SUSMP requirements do not necessarily apply to projects approved prior to the SUSMP requirements, if the SUSMP requirements are infeasible. Moreover, the permit requirements concerning SUSMPs provide considerable flexibility concerning the nature of any post-construction BMPs which may be included in a design. As such, we believe that the permit adequately addresses this issue.

3) Industrial/Commercial Inspections

A commenter argued that EPA regulations do not require inspections of specific commercial facilities or some of the industrial facilities listed in the permit. First, with regards to commercial facilities, EPA regulations at 40 CFR 122.26(d)(2)(iv)(A) provide for a broad program of "source control and structural measures to reduce pollutants from runoff from commercial and residential areas . . ." We believe that this regulation provides a firm basis for the permit's requirements related to commercial facilities. The requirements for outreach to commercial facilities, the inspections, and the follow-up enforcement would all be consistent with a program of "source control" measures to be included in a storm water management program.

For industrial inspections, EPA regulations at 40 CFR 122.26(d)(2)(iv)(C) require that permittees develop and implement controls for certain specified industrial sources and other industrial facilities which "the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system." A commenter appears to be arguing that the list of industrial facilities for which the permit requires inspection goes beyond the list in the EPA regulations.

The issue of industrial inspections also arose for the Los Angeles County MS4 permit. The State Board, in a memo dated November 9, 2001, from Michael Lauffer of the State Board to Dennis Dickerson, Executive Officer of the Los Angeles Regional Board, noted that under Section 402(p)(3)(B)(iii) of the CWA, the Board has broad authority to require "such other provisions . . . as the State determines appropriate . . .", and that this would provide a basis for requirements that go beyond the specific provisions of the EPA regulations. We would agree with the State Board on this matter, and that the Regional Board would have the authority to require inspections of all the industrial facilities listed in the permit, notwithstanding the specific provisions of the EPA regulations.

4) Monitoring Program

We are pleased to see that the Board has proposed to include a variety of storm water environmental indicators (chemical, toxicity and bioassessment) in the proposed monitoring program, rather than focusing on chemical monitoring which has been the tendency in the past. This is consistent with the recommendations of a conference which EPA co-sponsored in Crested Butte, CO in 1995 (Stormwater NPDES Related Monitoring Needs, Proceedings of an Engineering Foundation Conference, ASCE, 1995). It is also consistent with the recommendations of a monitoring program guide which EPA developed in conjunction with the Center for Watershed Protection entitled "Environmental Indicators to Assess Stormwater Control Programs and Practices", dated July, 1996.

EPA also recommends that costs be considered when developing monitoring programs required by NPDES permits (EPA 833-B-96-003). We believe that your approach of using the monitoring costs of nearby established County programs as a benchmark is reasonable. We note that a commenter has disputed the Board's comparison as presented in the fact sheet for the permit. However, it is not clear to us what activities were included in the cost figures for Orange County and San Diego County; as such, it is difficult to evaluate these claims. While it may be appropriate to adjust the monitoring program requirements when the cost issues are sorted out, we would recommend that you retain a mix of environmental indicators in the permit as you have proposed.

We also disagree with a commenter who seems to feel that the monitoring should be scaled back since the storm water discharges are not necessarily impacting areas used for water recreation (as is the case for other Southern California MS4s). However, we believe that

protecting the important aquatic resources of the Santa Margarita River and its tributary streams provides a full justification for the monitoring program.

5) Environmental Effects of the Storm Water Discharges in the Watershed

Commenters have argued that urban runoff in this particular watershed does not pose a significant water quality problem, and that the permit requirements should be reduced accordingly. EPA's Phase II regulations do indicate that the actual impacts of the discharges may be considered by the permitting authority in determining MEP. However, we believe that the fact sheet and the findings for the permit adequately document existing water quality concerns in the watershed (and potential future concerns due to the rapid growth of the area) and that the permit requirements are appropriate for this area.

6) Irreducible Concentration for Phosphorus

A commenter contended that it may not be possible to attain the total phosphorus objective of 0.1 mg/l with conventional technology. The commenter pointed to a recent article in The Practice for Watershed Protection, which suggested that "irreducible concentrations" may exist for storm water treatment technologies such as ponds and wetlands and that the phosphorus objective of 0.1 mg/l may not be attainable. The commenter then suggested that many of the new permit requirements would not be appropriate as a result.

We would disagree with the commenter on this matter. While there may be limitations regarding some storm water treatment technologies (such as ponds and wetlands), the permit requires other types of BMPs (such as inspections and education of facilities using fertilizers) which should help reduce phosphorus discharges to the receiving water and help to minimize potential impacts to the receiving waters. As such, we believe these BMPs should be worthwhile.

7) Need for a Cost/Benefit Analysis

This issue was analyzed by the State Board's Office of Chief Counsel during the issuance of the MS4 permit for Los Angeles County (memo dated November 9, 2001 from Michael Lauffer of the State Board to Dennis Dickerson, Executive Officer of the Los Angeles Regional Board). The State Board concluded that the Los Angeles Regional Board does not necessarily have to conduct a cost/benefit analysis in support of the permit. We believe that the State Board's analysis would apply to the issuance of San Diego Regional Board's permit as well and that this issue should not deter the Board from proceeding with permit issuance.

8) Compliance with CEQA

Commenters have argued that the proposed permit should be subject to CEQA because it allegedly includes requirements which exceed the requirements of the CWA, such as the SUSMP

requirements. This issue was analyzed by the State Board in a number of recent orders, for example Order WQ 2001-15, dated November 15, 2001 which involved the San Diego MS4 permit. The State Board noted that the Regional Board is exempt from CEQA when issuing any NPDES permit, except for a permit for a "new source" as defined by the CWA; the MS4 would not be a new source as defined by the CWA - see Section 306(a)(2) of CWA.

Given the State Board's analysis noted above, it does not appear to be relevant to the CEQA question whether a permit goes beyond the requirements of the CWA. Nevertheless, we believe that the best management practices (BMPs) and other requirements in the permit are simply the Board's best judgment regarding what the Board is required to include in the permit to fulfill the Board's responsibilities under the CWA. As such, the permit requirements do not exceed the requirements of the CWA.

9) Unfunded Mandates

Commenters have alleged that some of the permit requirements (e.g. inspection requirements for industrial/commercial facilities) exceed Federal requirements and thus become unfunded mandates prohibited by the California Constitution. We disagree that the permit requirements are not Federal requirements. As noted previously, we believe that the permit requirements are the Board's best judgment regarding what the Board is required to do in order to comply with the CWA and Federal NPDES storm water regulations at 40 CFR 122.26. As such, the permit requirements are not unfunded mandates.

10) Consistency of the Permits Issued by Separate Regional Boards

We appreciate that Riverside County is subject to MS4 permitting by three different Regional Boards, and that consistency among the permits is desirable for the permittee. However, each permit also needs to be tailored to the specific watershed involved. The San Diego Regional Board's comparison of the provisions for the three Riverside County permits shows that the permits are reasonably similar and we believe that it should be possible for any differences to be accommodated by the permittee.

11) Compliance with Water Quality Objectives

Commenters have argued that there is no basis for permit's requirements for water quality-based effluent limitations (WQBELs). In support of this contention, they cite a September 15, 1999 decision by the Ninth Circuit (Defenders of Wildlife v. Browner 191 F.3d 1159, 1166-67), in which the Court held that WQBELs are not necessarily required by the CWA for MS4 permits. However, as the Board is likely aware, the Court decision also provided that the permitting authority may include WQBELs in MS4 permits at its discretion based on Section 402(p)(3)(B)(iii) of the CWA. In a memo dated October 14, 1999 (after the Court's decision), staff of the State Board's Office of Chief Counsel recommended a continuation of permit language which had been developed prior to the Court decision. We believe this is fully

consistent with the discretion provided by the Court, and that the permit is also consistent with the Court decision and the CWA.



RICHARDS | WATSON | GERSHON

ATTORNEYS AT LAW – A PROFESSIONAL CORPORATION

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Telephone 213.626.8484 Facsimile 213.626.0078

CM 3/11/04
This was received by
Faxon 3/10/04.
Megan G

RICHARD RICHARDS
(1916-1988)

GLENN R. WATSON
(RETIRED)

HARRY L. GERSHON
(RETIRED)

ERWIN E. ADLER
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SAN FRANCISCO OFFICE
TELEPHONE 415.421.8484

ORANGE COUNTY OFFICE
TELEPHONE 714.990.0901

March 10, 2004

VIA FACSIMILE & MAIL

Mr. John H. Robertus
Executive Officer
California Regional Water Quality Control
Board – San Diego Region
9714 Park Court, Suite 100
San Diego, CA 92123-4340

Re: City of Temecula's Comments Regarding Tentative Order R9-2004-001,
NPDES No. CAS 0108766 – Waste Discharge Requirements for
Discharges of Urban Runoff From the Municipal Separate Storm Sewer
Systems (MS4s) Draining the County of Riverside, the City of Murrieta,
the City of Temecula and Riverside County Flood Control and Water
Conservation District within the Santa Margarita Watershed

Dear Mr. Robertus:

The City of Temecula ("Temecula" or the "City") submits the following supplemental comments with respect to the Regional Board's Tentative Order R9-2004-001 ("Tentative Order"). Temecula submitted comments prior to the February 11, 2004 hearing. Representatives of the City appeared and testified at the hearing. Temecula's attorneys also submitted evidentiary objections to certain documents and reports listed in the Fact Sheet and requested that the hearing be conducted in accordance with the State Board's regulations for adjudicative proceedings set forth in 23 CCR 648. Temecula also incorporates by reference the comments which the other Permittees have submitted to the Regional Board. Temecula is submitting these supplemental comments to both provide additional legal and factual background regarding the provisions of the Tentative Order and to respond to some of the comments and testimony presented at the hearing.

PRELIMINARY STATEMENT

Other Permittees have submitted supplemental comments regarding a number of the issues discussed at the hearing and which Temecula joins and incorporates herein. Accordingly, these supplemental comments address legal issues raised by the

Mr. John H. Robertus
March 10, 2004
Page 2

Regional Board's Tentative Order and which we believe the other permittees share with the City of Temecula.

The City of Temecula is concerned that the Regional Board is intent upon adopting a stormwater Permit that exceeds or is otherwise contrary to its authority under either the Clean Water Act ("CWA") or state law. We are also concerned that both the Tentative Order and the Tentative Fact Sheet appear to rely on documents, studies and reports that have nothing to do with the specific hydrological, geological and natural conditions found in the Upper Santa Margarita River Watershed.

One of the Board's staff, Megan Quigley was recently quoted in the North County Times, acknowledging that lack of data regarding the extent of any water quality impacts to the Upper Santa Margarita Watershed. But, according to Board staff, such concerns are "beyond the point." We respectfully disagree.

Ms. Quigley is also quoted in the newspaper article as saying that the Regional Board's intention in issuing the Permit is to "to prevent problems." However, the Board's own Tentative Fact Sheet states at page 15:

"To date, there has not been sufficient monitoring to determine if toxicity from urban runoff exists in the Upper Santa Margarita Watershed."

These statement raise the obvious question of, what exactly are the water quality problems in *this watershed* that the Regional Board is trying to correct through the Tentative Order.

For example, the primary contaminant of concern in the Santa Margarita River Watershed is phosphorous. There is no evidence that urban runoff is the source of this contaminant. Furthermore, according to the San Diego County Permittees' 2002-2003 urban runoff monitoring report, phosphorous levels downstream in the Santa Margarita river are well below water quality objectives.

Preventing water quality control problems in the Upper Santa Margarita Watershed before they manifest is certainly a laudable goal and one that the City shares with Regional Board. But the City's concern - and the concern of all of the Permittees -

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is that the Tentative Order appears to simply impose the same conditions on the Permittees under this Permit as those which this Regional Board has imposed on cities in both South Orange County, as well as San Diego County, under the MS4 permits which the Regional Board has issued for those watersheds. The city, however, fails to see the any recognition by the Regional Board in the Tentative Order of the environmental, hydrological, demographic and geographic factors which are unique and specific to southwestern Riverside County.

Instead, the Tentative Order puts the City and the other Permittees under the same permitting regime as larger communities in adjacent watersheds; watersheds which are considerably more developed and which have documented water quality problems.

It is frustrating for the City and the other Permittees, after having made significant progress under the two prior MS4 permits, and after having spent substantial amounts of money, as well as valuable personnel resources, to now be told by the Regional Board that Temecula will have to expend substantial sums of additional money over the term of this Tentative Order to combat problems which may not exist and to implement expensive programs which are not directed to any verifiable water quality problem. The City's concerns, however, seem to have fallen upon deaf ears.

COMMENTS

1. The Tentative Order Does Not Contain a Safe Harbor Provision

The Regional Board appears to believe that the City - or for that matter any of the Permittees - is in a position to completely stop storm water runoff which is created by other third parties, simply because those third parties lie within the City's jurisdiction. The Regional Board's apparent belief, however, is incorrect, both factually and legally. As the Court noted recently in *Carson Harbor Village, Ltd. v. Unocal Corp.*, 287 F.Supp.2d 1118 (C.D. Cal. 2003), cities have little, if any control, over anything that goes into its sewer systems and, are not legally responsible for the components of storm water. 287 F.Supp.2d at 1192.

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The lack of a Safe Harbor Provision in the Tentative Order is a source of very real concern for the City and the Permittees. Neither the "Prohibition" provisions (Part A, p. 6), nor the Receiving Water Limitations provisions (Part C, p. 7) of the Tentative Order provide any assurance to the City and the other Permittees that, once they have implemented the storm water management programs set forth in the Tentative Order in a timely and complete manner, they will then be deemed to be in compliance with the Tentative Order's Prohibitions and Receiving Water Limitations provisions.

The Regional Board has taken an action which finds no support in the Clean Water Act ("CWA"). The plain language of Section 402(k) of the CWA provides that "[compliance with a permit issued pursuant to this section shall be deemed compliance . . ." 33 U.S.C. § 1342(k). As the United States Supreme Court has noted: "[with few exceptions, for enforcement purposes a discharger in compliance with the terms and conditions of an NPDES permit is deemed to be in compliance with those section of the Clean Water Act on which the permit conditions are based." *EPA v. State Water Resources Control Bd.* (1976) 426 U.S. 200, 205.

Moreover, the State Water Resources Control Board *specifically approved* the inclusion of Safe Harbor provisions in Environmental Health Coalition, WQO No. 98-01 (1998). In that matter, the petitioner contended that the receiving water limitations section in the NPDES Permit for certain Orange County cities violated the CWA and its implementing regulations because it did not require compliance with water quality standards. That permit, like the Tentative Order, provided "...that the permittees 'will not be in violation of [receiving water limitations] so long as they are in compliance with the requirements' for evaluating the DAMP."

The State Board specifically rejected the petitioners' contention that the inclusion of a Safe Harbor Provision was improper and went on to note that it had previously approved the same "Safe Harbor" provision in SWRCB WQO No. 96-13, with respect to the storm water permit for certain permittees in the Santa Clara Valley issued by the San Francisco Bay Regional Board. As the State Board stated:

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"The SWRCB has already determined that the use of BMPs to achieve both the technology-based effluent limitations and the water quality-based effluent limitations complies with the CWA and the Porter-Cologne Act. See SWRCB WQO No. 91-03. Accordingly, the SWRCB agrees that use of the phrase that the "permittees will not be in violation of . . ." complies with the CWA and, in fact, used that same phrase in SWRCB Water Quality Order 97-03-DWQ (Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities, NPDES General Permit No. CAS000001) (the General Industrial Permit)." WQO 98-01.

Furthermore, as the State Board noted in the Matter of the Petition of Save San Francisco Bay Association, et al., WQO No. 96-13, it has approved the inclusion of a Safe Harbor provision in the Receiving Water Limitations language for various storm water permits.

Accordingly, the City requests that the Regional Board include a Safe Harbor Provision in the Permit which it ultimately will adopt.

2. **The Tentative Order Imposes Unfunded Mandates On the City and the Other Permittees**

The City is concerned that the Tentative Order imposes an unfunded mandate on the City and all of the Permittees, in violation of the California Constitution. California Constitution, Article XIII B, § 6, provides that:

"Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service[.]"

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Section 6 contains very limited exceptions to this otherwise very broad rule. A subvention of funds is not required for:

- (a) Legislative mandates requested by the local agency affected;
- (b) Legislation defining a new crime or changing an existing definition of a crime; or
- (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

The purpose of Section 6 is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations" which are imposed on the state by articles XIII A and XIII B. *County of Fresno*, 53 Cal.3d at 487; *See also, County of Los Angeles*, 43 Cal. 3d at 61. With certain exceptions, Section 6 essentially requires the state "to pay for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon local governmental agencies." *Hayes v. Commission on State Mandates* (1992) 11 Cal. App.4th 1564, 1577. The State is most certainly required to reimburse local governments when it "freely chooses to impose on local agencies any peculiarly 'governmental' cost which they were not previously required to absorb." *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 70.

Section 6, Article XIII B, however, does not establish any specific procedure by which a local government may seek a subvention of funds from the State. Instead, the procedures to be followed when a local governmental agency seeks reimbursement from the state are set forth in Government Code §§ 17500-17630 (the "Unfunded Mandates Statute"). However, even though the Unfunded Mandates Statute establishes the procedure by which a local governmental entity may seek a subvention of funds, the Unfunded Mandates Statute fails to provide meaningful definitions for certain key terms.

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An example is the term “mandates”. While the Unfunded Mandates Statute does contain a definition of the phrase “costs mandated by the State,”¹ this State's Court of Appeal and Supreme Court have been called upon numerous times to analyze just what qualifies as a “mandate”, and thus a cost that would potentially be entitled to a subvention of funds. For instance, in *Long Beach Unified School District v. State of California* (1990) 225 Cal. App. 3d 155, the Court of Appeals observed that: “we understand the use of ‘mandates’ in the ordinary sense of ‘orders’ or ‘commands,’ concepts broad enough to include executive orders as well as statutes.” 225 Cal. App. 3d at 174. In further discussing just how broadly this definition of “mandate” should be applied, the *Long Beach* court went on to note that “the concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public.” *Id.* at 174. The Court concluded that California voters, in approving the measure that is now enshrined as Article XIII B, Section 6, had intended that all state mandates, other than the ones excepted in Section 6, were to be reimbursed by the State. *Id.* at 175.

While the Unfunded Mandates Statute provides a definition for the term “mandate” it contains no such definition for the phrase “higher level of service”. As the Supreme Court observed in *County of Los Angeles v. State of California* while discussing the history behind the adoption of Article XIII B, neither this constitutional provision, nor the ballot materials that were issued prior to the provision's adoption, define this phrase. 43 Cal. 3d at 50.

Courts, however, have provided guidance as to how this phrase should be interpreted. At least one court has said that phrase “higher level of service” is to be “read in conjunction with the phrase ‘new program.’” *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal. App. 4th 1176, 1191-1192. As the

¹ “Costs mandated by the state” means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution...” Gov’t Code § 17514.

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County of Los Angeles court noted, “[t]hus read, it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing programs.” 110 Cal. App. 4th at 1191-92.

The term “program” is also not defined in either Section 6 or the Unfunded Mandates Statute. Courts have concluded that in adopting Article XIII B, the voters of this State intended for this term to apply to “programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, imposed unique requirements on local governments and do not apply generally to all residents and entities in the state.” 110 Cal. App. 4th at 1192 (internal citations omitted). As the *County of Los Angeles* Court noted, a program is only considered “new” when a local governmental has not “previously been required to institute it.” *Id.* at 1189.

Ultimately, though, the critical inquiry regarding this question is whether the State is “attempting to divest itself of its responsibility to provide fiscal support for a program, or forcing a new program on a locality for which it is ill-equipped to allocate funding.” *County of Los Angeles v. Commission on State Mandates*, 110 Cal. App. 4th at 1187.

Because the Permit now requires Permittees to inspect certain classes of facilities which were previously inspected by the Regional Board, the Permit arguably runs afoul of the central reason why Article XIII B, § 6 was adopted: “to preclude the state from shifting responsibility for carrying out governmental functions onto local entities that [a]re ill equipped to handle the task.” *County of Fresno v. State of California* (1991) 53 Cal. 3d 482, 487. This is a concern which the Permittees have repeatedly raised with the Regional Board and which Permittees also raised in their Report of Waste Discharge (“ROWD”). ROWD, at p. 7-1.

Similarly, the City has also attempted to impress upon the Regional Board the very real fiscal difficulties which it will face if it is obliged to implement the enforcement provisions of the Tentative Order. See, City of Temecula, Initial Comments, Tentative Order No. R9-2004-001, NPDES No. CAS0108766, at p. 3.

Therefore, Article XIII B, § 6 of the California Constitution (“Constitution”) would appear to dictate that the Permittees are entitled to a subvention of funds for the

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costs of complying with the Permit or stated a difference way, neither the Legislature nor the State or Regional Boards can require that the Permittees implement these new programs if they are not prepared to reimburse the Permittees for the costs of implementation.

3. **Water Code Section 13389 Does Not Exempt the Regional Board From Compliance With CEQA**

Given the programmatic and comprehensive scope of the Tentative Order, the Regional Board is obliged to comply with CEQA. This is because, as drafted, the Tentative Order significantly exceeds the scope of what is required to comply with the provisions of Section 402(p) of the Clean Water Act

One of the ways in which the Tentative Order exceeds the requirements of the CWA, thereby triggering the requirement that the Regional Board comply with CEQA, is the Order's imposition of BMP's for new development and significant redevelopment activities.

Given the programmatic, comprehensive and mandatory requirements for the inclusion of BMPs, not only this Tentative Order, but in the other storm water permits that the Regional board has adopted, it cannot avoid implementing the CEQA review process. For the Regional Board to impose such requirements, without first seeking CEQA review, effectively thwarts the purpose of CEQA which prohibits the "piecemealing" of projects, in order to avoid CEQA review. *See Bozung v. LAFCO* (1975) 13 Cal. 3d 263, 283; *See also*, CEB, Practice Under the California Environmental Quality Act, § 4.19. The Regional Board cannot, therefore, include specific provisions in all NPDES permits related to a particular category dischargers and hope to avoid CEQA review.

This Tentative Order is not merely a set of "waste discharge requirements," as that term is defined by Section 13263 of the Water Code, but amounts, instead, to a master land use planning document for those portions of Riverside County that lie within the Regional Board's jurisdiction. As such, it is similar to the general plans adopted by this State's cities to guide and plan their future growth and which are required to be adopted in accordance with the provisions of CEQA. CEB, Practice Under the California Environmental Quality Act, § 4.13. Chapter One of CEQA

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provides in part that: "each public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so." Cal. Pub. Res. Code § 21002.1. Accordingly, the Tentative Order must undergo CEQA analysis before the Regional Board can adopt formally adopt the Order.

4. The Tentative Order Interferes With the City's CEQA Processes

The Regional Board has established requirements in the Tentative Order which substantially impede the City's control over land use within its jurisdiction. Furthermore, the Regional Board has not complied with CEQA's procedural and substantive requirements. The Regional Board seems to assume that the City has the authority to dictate the terms and conditions under which a third party may develop land within the City's boundaries. While this is true to a limited extent, there are some very real limits to the City's ability to impose conditions on third parties regarding the development of their private property. The Tentative Order, however, makes no recognition of this fact whatsoever.

The Tentative Order contains a number of provisions that specifically require the Permittees to adopt or modify their development approval project process (See, Permit § F.2). ordinances and policies for the review and approval of development and redevelopment projects in areas where discretion has been typically been reserved to the Cities. The City is concerned that, by establishing such requirements in the new NPDES Permit, the Regional Board has crossed the line into an area typically handled through building codes which are supposed to be uniform throughout the state.

Development controls typically only apply to "Discretionary Projects", as those projects are defined in Section 15357 of the Guidelines for Implementation of the California Environmental Quality Act ("Guidelines"). The Guidelines apply to those projects which require the exercise of judgment or deliberation by a city in connection with the decision to approve or disapprove the project, as distinguished from situations where the city merely must determine whether there has been conformity with applicable statutes, ordinances, or regulations. We question whether the City is capable of imposing the storm water control requirements on non-discretionary projects, such as the issuance of a building

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permit on a project where entitlements have already been granted and where the issuance of the permit is simply a ministerial act by a city.

The NPDES Permit also requires the City to revise its environmental review process (*See*, Tentative Order, § F.3) in its General Plan, including the land use element. We believe that these requirements are contrary and duplicative to State laws that adequately cover both General Plans and environmental review and represent an unwarranted interference with a city's planning functions.

5. The Tentative Order is Not Supported By Relevant Evidence

The State Water Resources Control Board's regulations governing adjudicative proceedings, such as a Regional Board's adoption of Waste Discharge Requirements, provide that such proceedings will be conducted in accordance with the provisions and rules of evidence set forth in Government Code § 11513. (*See*, 23 C.C.R. § 648.5.1). These same regulations provide that "hearsay evidence is admissible subject to the provisions of Government Code § 11513." *Id.* Government Code § 11513(c) in relevant part provides that: "any relevant evidence shall be admitted *if it is the sort of evidence on which responsible persons are accustomed to rely* in the conduct of serious affairs." Govt. Code § 11513(c)(emphasis added). Nevertheless, evidence must still be "relevant and reliable." *Aengst v. Bd. of Medical Quality Assurance* (1980) 110 Cal.App.3d 275.²

As an initial matter, before any evidence can be admitted, the proponent must lay a foundation for its admission. *See, People v. Haslouer* (1978) 79 Cal.App.3d

²One document which is referenced in the Tentative Fact Sheet, and which presumably will be made part of the Administrative Record regarding the Regional Board's eventual adoption of the Tentative Order, is an article written by the Regional Board's own Chairman, John Minan. This article entitled, "Municipal Storm Water Permitting in California" ("Article"), raises interesting legal issues regarding its relevance and its admissibility. Admittedly, Mr. Minan notes that "the views reflected in this Article are his own," and not those of the Regional Board. (Article, at p. 1, Fn. a1).

The Regional Board's inclusion of the Article in the Administrative Record, however, is unwarranted and without foundation. As an initial matter, the Article is hearsay. While, as noted above, hearsay is admissible, it must be of the "sort of evidence on which responsible persons are accustomed to rely." Gov't Code § 11513(c). The Article, however, is not an opinion offered by an expert about the specific nature of storm water within the Santa Margarita Watershed. Instead, much of this article essentially discusses how the Regional Board dealt with, for example, the San Diego County Storm Water Permit. Moreover, the Article essentially amounts to an announcement in advance of what the Regional Board's decision on the Tentative Order will be.

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818, 825. Establishing a foundation for the evidence which a proponent seeks to admit is a prerequisite for the admission of any evidence. *People v. Morales* (1926) 77 Cal.App. 483, 492.

Most of the documents listed in support of the Tentative Order have little, if any, relevance to the conditions of the Upper Santa Margarita Watershed, and are not relevant. In order for evidence to be relevant, the evidence must demonstrate "same or similar" conditions. *Hercules Powder Co. v. Automatic Sprinkler Corp. of America* (1957) 151 Cal.App.2d 387, 400. According to this standard, the relevancy of most, if not all, of the reports and other documents referenced in the Tentative Fact Sheet are, at best, questionable and cannot be appropriately relied upon by the Regional Board in its adoption of the Tentative Permit. Notably, only four of the documents and reports listed in the fact sheet deal with the unique hydrology and conditions of that portion of the Santa Margarita Watershed that is the subject of the Permit.³

As discussed below, the City also objects to many of the listed documents because the Regional Board has failed to establish an evidentiary foundation for these documents. Absent the laying of such a foundation, there is no basis for placing these documents into the administrative record.

6. **Even If the Reports and Other Documents Cited In the Tentative Fact Sheet Were Arguably Admissible in These Proceedings, the Regional Board Has Failed To Show How They Support The Terms and Conditions In the Tentative Order**

The Tentative Order contains numerous Findings of Fact which are completely

³The four reports listed in the Tentative Fact Sheet which contain specific discussions of the Upper Santa Margarita River's water quality and related conditions are:

- California Department of Fish & Game 2002 California Regional Water Quality Control Board, San Diego Region 2002 Biological Assessment Report: Results of May 2001 Reference Site Study and Preliminary Index of Biotic Integrity.
- Rancho California Water District 2003. Drinking Water Source Assessment and Protection Program.
- Shapiro 1991 Refuge in an Urbanized Land, Santa Margarita River: Cultural and Natural Resource Value.
- Stein, Eric and Ambrose, Richard 1998. "Cumulative Impacts of Section 404 Clean Water Act Permitting on the Riparian Habitat of the Santa Margarita, California Watershed. "Wetlands, Vol. 18, No. 3

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unsupported by any specific references in the Tentative Fact Sheet to the Upper Santa Margarita Watershed. A case in point is Finding of Fact Number 4, at page 2, which provides that:

“Urban runoff contains waste, as defined in the California Water Code (CWC), and pollutants that adversely affect the quality of the waters of the State. The discharge of urban runoff from an MS4 is a 'discharge of pollutants from a point source' into waters of the United States as defined in the CWA.”

What is completely absent from this finding of fact, though, is any evidence that it is applicable to the Upper Santa Margarita River Watershed. Certainly the Tentative Fact Sheet contains no specific support or references to how urban runoff is adversely affecting the Upper Santa Margarita River. For example, the Tentative Fact Sheet provides that:

Urban runoff contains waste, as defined in the California Water Code (CWC), and pollutants that adversely affect the quality of waters of the State. The discharge of urban runoff from an MS4 is a “discharge of pollutants from a point source” into waters of the United States as defined in the CWA (**Finding No. 4**). Section 13050(d) of the CWC defines “waste” as “sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal.” 40 CFR 122.2 defines “point source” as “any discernable, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.” 40 CFR 122.2 defines “discharge of a pollutant” as “Any addition of any pollutant or combination of pollutants to waters of the U.S. from

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any point source.” Also, the justification for control of pollution into Californian waters can be found at CWC section 13260(a)(1), and State Water Resource Control Board (SWRCB) Order WQ 2001-15 verifies that urban runoff contains waste (SWRCB, 2001).

Worse still, however, is that the Tentative Order contains Findings of Fact for which there is no corresponding support cited in the Tentative Fact Sheet. Finding of Fact Number 23 provides:

RGOs are significant sources of pollutants in urban runoff. RGOs are points of convergence for motor vehicles for automotive related services such as repair, refueling, tire inflation, and radiator fill-up and consequently produce significantly higher loadings of hydrocarbons and trace metals (including copper and zinc) than other urban areas. To meet MEP, source control and treatment control BMPs are needed at RGOs that meet the following criteria: (a) 5,000 square feet or more, or (b) a projected Average Daily Traffic (ADT) of 100 or more vehicles per day. These are appropriate thresholds since vehicular development size and volume of traffic are good indicators of potential impacts of urban runoff from RGOs on receiving waters.

While the City is only listing two examples of how the Tentative Order's Findings of Fact are made without regard to any support in the Tentative Fact Sheet now, there are numerous other instances from which the City could provide examples.

7. **The Tentative Order, If Adopted By the Regional Board, Would Be In Violation of The Administrative Procedures Act**

The Administrative Procedures Act (“APA”), Gov’t Code § 11500, *et seq.*, prohibits the Regional Board from adopting a regulation of general applicability without complying with the APA.

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While the issuance of individual waste discharge requirements may not be subject to the provisions of the APA, the standards, objectives, and guidelines which dictate the content of those requirements have to be formally adopted in accordance with the APA. Government Code § 11352(b). The Tentative Permit, however, does not represent any type of individualized determination regarding the terms and conditions which will need to be instituted by the Regional Board, in order for it to achieve its stated goal of reducing stormwater runoff. Instead, as the Regional Board's staff acknowledged at the Regional Board's hearing on the Tentative Order on February 11, 2004, the staff has adopted a "Template" which the Board originally adopted to regulate stormwater discharges in San Diego County, but which has subsequently been used by the Board as the basis for the South Orange County MS4 Permit, and now for this Tentative Order. Such a "one size fits all" approach, however administratively convenient for the Regional Board's staff, cannot and should not be employed where, as here, there is no evidence of anything approaching the storm water and urban runoff problems which led to the creation of the original Template.

As a result of using this Template, the Regional Board is essentially engaging in informal rulemaking through its creation of what essentially amounts to the creation of a rule of general application, which establishes a type of water quality control program for the area within its jurisdiction. This failure to subject such a program pursuant to the formal rulemaking procedures set forth in the APA cannot be squared with the opinions rendered by this State's courts. *State Water Resources Control Bd. v. Office of Administrative Law*, (1993), 12 Cal. App. 4th 697, 703 ("Bay Planning").

In *Bay Planning*, a regional board adopted amendments to a water quality control plan, and the State Water Resources Control Board approved the amendments. A nonprofit group sought a determination that the amendments could not be adopted without following the APA. *Id.* at 700. The Court of Appeals agreed with the nonprofit group, holding that the water quality control plan was a quasi-legislative act, as contemplated by Government Code § 11342. The court noted that "a regulation which is part of a water quality control program is a regulation under the APA." *Id.* at 703. The State Board in *Bay Planning* ratified the Regional Board amendments, and, as noted above, the court found that the adoption of the amendments did not comply with the APA.

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Although California law does not require administrative agencies to comply with the APA when simply issuing permits, including the issuance of Waste Discharge Requirements ("WDR"), the Tentative Order goes far beyond the terms of a typical WDR. It is, in effect, a set of regulations, containing standards of general application which fall within the scope of the APA. (Gov. Code § 11342(g).) As such, the exemption under Gov't Code Section 13389 for Waste Discharge Requirements is inapplicable.

Government Code section 11342(g) defines the term "regulation" broadly to include "every rule, regulation, order, or standard of general application or the amendment, supplement or revision of any rule, regulation, order or standard adopted by any state agency to implement, interpret or make specific law enforced or administered by it" (Gov. Code § 11342(g).) California courts have found that "any regulation promulgated contrary to the provisions of Chapter 3.5 of the Administrative Procedures Act is invalid." See, e. g., *Goleta Valley Community Hospital v. Department of Health Services* (1983) 149 Cal.App.3d 1124, 1129.

Clearly, the Regional Board has attempted to "regulate" by requiring that Permittees modify their CEQA guidelines and modify their entire CEQA process in considering the imposition of mitigation measures to address potential adverse impacts from development and redevelopment projects. They further seek to "regulate" by imposing additional regulatory requirements on Permittees in revising their General Plans.

In short, the APA expressly prohibits public agencies from issuing, utilizing and enforcing any order, rule or standard of general application, unless the same has been adopted as a formal regulation. See *Union of American Physicians and Dentists v. Kizer* (1990) 223 Cal.App.3d 490, 496.

8. **Water Code Section 13263 Clearly And Explicitly Requires The Regional Board To Consider Economic Factors In Developing A Permit**

The Regional Board has an obligation to consider the likely economic impact of the waste discharge requirements which it proposes to adopt through the Tentative Order, and the consideration of such impacts is specifically

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contemplated by the Water Code. Water Code § 13263 (“Discharge requirements; ...”) in relevant part provides that, in adopting any Water Discharge requirements,” the Regional Board is to consider, among other factors, “the provisions of [Water Code] Section 13241.” Section 13241, (“Water quality objectives; ...”), in turn, establishes several factors, which the Regional Board is obliged to consider in adopting any Waste Discharge Requirements, including:

- (a) Past, present and probable future beneficial uses of water;
- (b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto;
- (c) Water quality conditions that could be reasonably achieved through the coordinated control of all factors which affect water quality in the area;
- (d) **Economic considerations**; (Emphasis added)
- (e) The need for developing housing within the region;
- (f) The need to develop and use recycled water.

Yet, in spite of this clear statutory mandate to the Board that it must consider the economic impact of any Waste Discharge Requirements prior to their adoption, there is no evidence that the Regional Board did so prior to issuing the Tentative Order. Certainly, the Regional Board makes absolutely no mention of ever having considered such factors in either the Tentative Order's findings of fact. (*See generally*, Tentative Permit, pp.1-5.) Nor is there any indication that the Regional Board considered such factors in the Tentative Fact Sheet. (*See generally*, Tentative Fact Sheet, pp. 3-23.) Finally, there is no indication that the Respondents ever considered such costs and benefits in their “Water Quality Control Plan – San Diego Basin (“Basin Plan”). (*See, generally*, Basin Plan, Chap. 4, pp. 4:1-4:106.) Nor is there any reference in the Permit to the Regional Board's having **ever** considered the costs and benefits of achieving the compliance with such water quality standards. (*See*, Permit, pp. 1-5.)

The Regional Board's failure to consider the economic impacts of its proposed Tentative Order are even more striking, given the comments which the County and County Flood Control District provided to the Board at its February 11th hearing on the Tentative Order as well as the comments which the Permittees are jointly submitting today. These comments serve to bolster a contention which

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the Permittees have made to the Regional Board's staff, namely that the Tentative Order imposes significant funding obligations on the Permittees, by requiring, among other things, the increased monitoring obligations, as well as the inspection of commercial, industrial facilities and construction sites which are otherwise regulated by the State Board's general permits.

9. **The Tentative Order Improperly Requires the City to Inspect Construction and Industrial/Commercial Facilities**

While many powers and duties of the Regional Board may be delegated to the Executive Officer, the Water Code does not provide for delegation of these duties to Permittees. *See*, Water Code §13223(a).

The Regional Board abused its discretion by requiring Permittees to inspect restaurants, construction and industrial/commercial Sites which already are covered by State-issued permits, as well as other facilities. Site inspection responsibilities for commercial and industrial facilities are already covered by state- or federally-issued permits, including NPDES General Permits. The responsibility for inspections under these permits belongs to the State Board and Regional Boards. Water Code §13163, §13267(c).

The CWA does not require the Petitioners to control pollutants from any and all commercial or residential facilities. (*See*, 40 C.F.R. 122.26(d)(2)(i).) Under these regulations, "storm water associated with industrial activity" is interpreted as those discharges coming from Phase I Industrial facilities. These facilities are already permitted by the State Board and the responsibility for the inspection of these facilities lies with the Regional Board. (40 C.F.R. 122.26(b)(14).)

The Industrial/Commercial Facilities Program in the Permit shifts the responsibility for the inspection of a portion of Phase I facilities that are covered under the State's General Industrial Permit to the Permittees. This attempt to pass along a current obligation of the Regional Board, and especially one which the Regional Board actually receives a fee for, to Permittees who would not be compensated for these inspections, clearly exceeds any authority of the Regional Board currently existing under state or federal law.

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Similarly, Section H.2.b of the Permit requires the Petitioners and other permittees to create an inventory of industrial facilities, whether or not they are subject to the General NPDES Permit for Storm Water Discharges Associated With Industrial Activities ("GIP"). The Permit also requires Petitioners and the other permittees to take steps to enforce the GIP against dischargers regulated under that Permit. Section H.2.d.

These provisions attempt to shift enforcement responsibility to the cities from the Regional Board. The Clean Water Act regulations governing MS4 permits do not require municipalities to inspect GIP facilities. Instead, the regulations require municipalities to inspect only a limited category of facilities (referred to as "Federally-mandated Facilities" in the Permit). Furthermore, the State Board has expressly provided that the **Regional Board shall be responsible** for enforcing the GIP. See Water Quality Order No. 97-03-DWQ, and Finding Nos. 11 and E.22 of Order No. 99-08-DWQ, which adopted the current General Construction Activities Storm Water Permit ("GCASP").

Both the GIP and the GCASP are NPDES permits, issued by the State Board under Section 402 of the Clean Water Act. Under the MOA the Regional Board is obligated to inspect industrial and other permittees.

The MOA specifically provides that, with respect to the State's inspection obligations, "[t]he **Regional Boards shall conduct compliance inspections** to determine the status of compliance with permit requirements . . ." (MOA, § IV.B.1.a.) Thus, the plain language of the MOA, neither mandates nor contemplates any inspection role or obligations for the Permittees.

State agencies delegated the responsibility for administering NPDES permits must meet the requirements contained in 40 CFR Part 123, including having a program capable of conducting inspections to determine compliance with permit conditions. 40 CFR § 123.26(b)(2). Any agency sharing NPDES administration obligations with a designated state agency must have "[s]tatewide jurisdiction over a class of activities or discharges." 40 CFR § 123.1(g). The Petitioners do not have authority to administer NPDES permits, inspect facilities for compliance with such permits nor, as importantly, have "statewide jurisdiction" over any activities or dischargers.

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Federal regulations do not require cities to inspect industrial facilities in general, including the entire subset of facilities required to obtain a GIP or GCASP. 40 CFR § 122.26(d)(2)(iv)(C). The regulations clearly contemplate that GIASP and GCASP facilities are a category separate and different than the facilities specifically identified in Section 122.26(d)(2)(iv)(C). The Regional Board cannot unilaterally delegate to the Petitioners the responsibility to inspect GIP and GCASP facilities. That responsibility belongs to the Regional Board.

10. The Regional Board Has Violated Health and Safety Code Section 57004

In addition to having failed to comply with the APA, the Regional Board also failed to obtain peer review of their scientific findings in accordance with Health & Safety Code § 57004.

Health and Safety Code § 57004(b) requires the state and regional boards to “conduct a scientific peer review of the scientific basis for any rule proposed for adoption by any board, department or office within the Agency (*i.e.*, the California Environmental Protection Agency). For purposes of § 57004, a “rule” is defined as either a regulation adopted pursuant to the APA or a “policy adopted by the State Water Resources Control Board, pursuant to the Porter-Cologne Water Quality Control Act . . .” Health & Safety Code § 57004(a)(1)(A) and (B).

Accordingly, because the Regional Board’s adoption and implementation of a “Template” Permit is, for all intents and purposes, a rule of general application, which should, pursuant to the APA, undergo formal rulemaking, the Regional Board is also obliged to submit the Tentative Order to the requisite peer review, pursuant to Health & Safety Code § 57004.

11. The Federal Paperwork Reduction Act Is Applicable to The Requirements Under The Permit

The Regional Board's Tentative Order demonstrates a failure by the Board to comply with the Paperwork Reduction Act (“PRA”) to the Permit, 44 U.S.C. §

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3051. Section 1 of the PRA provides, in relevant part, that the purpose of the PRA is to:

“...minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, Federal contractors, State, local and tribal governments, and other persons resulting from the collection of information by *or for the Federal Government*;...” 44 U.S.C. § 3501(1)(emphasis added).

Clearly, then, the PRA covers information both sought by or provided to the Federal Government. Under the terms of both the Permit, as well as the 1989 Memorandum of Agreement (“MOA”) between USEPA and the State Board which governs the state's administration of the NPDES program, the City will be required to report a variety of information to the state and federal government, specifically, USEPA Region IX. Article IV, Section C.1 of the MOA explicitly provides that “[t]he Regional Boards shall require each NPDES permittee to send copies of its Discharge Monitoring Reports (“DMRs”) to EPA and the Regional Boards for review. The City will also required to submit these monitoring reports, pursuant to the terms of 40 C.F.R. § 122.48 (“Requirements for recording and reporting of monitoring results (applicable to State programs, see § 123.25)’”).

12. **The Federal Regulatory Flexibility Act Is Applicable To The Regional Board's Tentative Order**

Under the federal Regulatory Flexibility Act (“RFA”), 5 U.S.C. § 601 et seq., the government cannot simply impose information gathering requirements, without first mandating that such requirements comply with the provisions of the RFA. The RFA applies not only to the federal government, but to state governmental agencies as well, where, as here, the Regional Board is acting in place of the federal government.

Recently, the Ninth Circuit decided the question of whether the USEPA had properly certified that the Phase II General Stormwater NPDES Permit had been properly certified that compliance with the permit would impose a significant economic impact on future Permittees. *Env'tl Def. Center v. U.S. Env't'l*

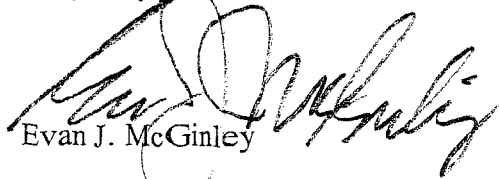
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Protection Agy. (9th Cir. Sept. 15, 2003) No. 00-70014 and No. 00-70734, at 13843-13846. The Court decided that the USEPA had properly so certified. *Id.*, at 449. More importantly, for purposes of these comments, given the Respondents' obligations under the MOA to comply with federal law in their administration of the NPDES program and in light of the applicability of the RFA to other stormwater permits similar to the one at issue here, the Regional Board must undertake an analysis of the cost of regulatory compliance, as required by the RFA.

CONCLUSION

The City respectfully submits these comments and trusts that the Regional Board will give these comments full and fair consideration as it works toward the final adoption of the Tentative Order.

Very truly yours,



Evan J. McGinley

11086\0112\767\61.1

cc: Aldo Licitra
Peter M. Thorson, City Attorney
John J. Harris, Esq.

GOOD MORNING CHAIRMAN AND MEMBERS OF THE BOARD.

MY NAME IS JASON UHLEY AND I AM THE STORMWATER PERMIT MANAGER FOR THE SANTA MARGARITA REGION OF RIVERSIDE COUNTY.

I AM TAKING THIS OPPORTUNITY TO PROVIDE YOU WITH AN UPDATE OF OUR ACTIVITIES SINCE THE HEARING ON FEBRUARY 11TH. I WOULD FIRST LIKE TO REVIEW A COUPLE OF POINTS THAT MAY HAVE BEEN LOST AT THE HEARING.

FIRST, THE COUNTY, CITIES AND THE DISTRICT SERVE THE SAME CITIZENS OF CALIFORNIA AS YOUR BOARD. IT IS TO OUR MUTUAL BENEFIT - AND THE BENEFIT OF THESE CITIZENS, TO DEVELOP A PERMIT THAT IS PROTECTIVE OF RECEIVING WATERS IN A MANNER THAT IS COST-EFFECTIVE, AND APPROPRIATE FOR THE WATER QUALITY CONDITIONS OF THE SANTA MARGARITA REGION.

SECOND, THE PERMITTEES EXISTING COMPLIANCE PROGRAMS ARE EFFECTIVE. THIS IS EXEMPLIFIED BY THE EXISTANCE OF ONLY ONE LOW PRIORITY IMPAIRMENT WITHIN THE WATERSHED. IN CONTRAST, THE COASTAL COUNTIES HAVE OVER 115 IMPAIRMENTS - MANY OF WHICH ARE HIGH PRIORITY IMPAIRMENTS. THE PERMITTEES BELIEVE THAT THIS IS AN INDICATION THAT SOME FLEXIBILITY CAN BE INCORPORATED INTO THIS PERMIT.

THIRD, THE PERMITTEES HAVE BEEN PROACTIVELY ADDRESSING THE IMPACTS OF GROWTH BY ADOPTING THE RIVERSIDE COUNTY INTEGRATED PLAN, WHICH WILL PROVIDE FOR CONSERVATION OF OVER HALF THE RIVERSIDE COUNTY

SUBMITTED BY
LINDA GARCIA

PORTION OF THE SANTA MARGARITA WATERSHED. COORDINATION WITH THE U.S ARMY CORPS OF ENGINEERS THROUGH THE SPECIAL AREA MANAGEMENT PLAN IS ENSURING ADDITIONAL COHESIVE AND INTEGRATED PROTECTIONS FOR WATERS OF THE U.S. THESE EFFORTS, TAKEN INDEPENDENT OF THE TENTATIVE ORDER, WILL AFFORD SIGNIFICANT PROTECTIONS TO OUR EXISTING STREAMS, LAKES AND RIVERS AND THEIR ASSOCIATED BENEFICIAL USES.

FINALLY, ALTHOUGH THE PERMITTEES CONTINUE TO HAVE CONCERNS WITH THE COSTS AND REQUIREMENTS OF THE TENTATIVE ORDER, THEY CAN BE RESOLVED.

AT THE HEARING, MEMBERS OF THE BOARD PROVIDED SUPPORT FOR SEVERAL OF THE ISSUES RAISED AT THE HEARING:

- THE PERMIT AND MONITORING PROGRAM SHOULD BE SPECIFIC TO THE WATERSHED
- THE TENTATIVE ORDER REQUIREMENTS FOR RETAIL GASOLINE OUTLETS SHOULD BE CAREFULLY CONSIDERED
- RESIDENTIAL BMPS EQUAL EDUCATION
- DUPLICATIVE INSPECTION REQUIREMENTS SHOULD BE DELETED
- AND FINALLY, THE TENTATIVE ORDER SHOULD BE MODIFIED TO ALLOW RECENTLY ADOPTED ORDINANCES REQUIRED FOR THE SANTA ANA PERMIT TO STAND.

FOLLOWING THE HEARING ON FEBRUARY 11 WE PROPOSED MEETING WITH REGIONAL BOARD STAFF TO ASSIST IN ADDRESSING THESE DIRECTIVES AND RESOLVING OTHER REMAINING ISSUES. HOWEVER, STAFF DECLINED ON THE ADVICE OF COUNSEL. BASED ON OUR EXPERIENCE IN THE RENEWAL OF THE MS4 PERMIT WITH THE SANTA ANA REGION, YOUR BOARD AND THE PERMITTEES ARE MISSING AN IMPORTANT OPPORTUNITY.

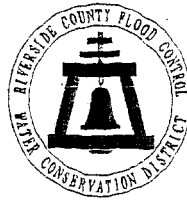
IN MAY OF 2002 WE WERE AT THE SAME POINT IN OUR PERMIT ADOPTION PROCESS WITH THE SANTA ANA REGIONAL BOARD. HOWEVER, THE SANTA ANA REGIONAL BOARD STAFF, WITH FULL KNOWLEDGE AND SUPPORT OF COUNSEL AND THEIR BOARD, MET WITH THE PERMITTEES THROUGHOUT THE SUMMER TO DEVELOP AN EFFECTIVE PERMIT THAT COULD BE MUTUALLY SUPPORTED. AT THE OCTOBER -2002 HEARING, THE PERMITTEES, REGIONAL BOARD STAFF AND THE BOARD MEMBERS ALL SUPPORTED THE ADOPTION OF THE PERMIT.

IT IS OUR HOPE THAT WE WILL HAVE THE OPPORTUNITY TO WORK WITH YOUR STAFF IN THIS MANNER TOWARD THE SAME OBJECTIVE.

TO FACILITATE THIS PROCESS, WE HAVE SUBMITTED REDLINE MARK-UPS OF THE TENTATIVE ORDER TEXT, AN ALTERNATIVE MONITORING PROGRAM AND ADDITIONAL WHITE PAPERS TO SUPPORT OUR CONCERNS.

WE REQUEST THAT YOUR BOARD AUTHORIZE STAFF TO MEET WITH THE PERMITTEES TO REVIEW THESE DOCUMENTS AND TO DEVELOP A MUTUALLY

SUPPORTABLE PERMIT. WE ARE OPTIMISTIC THAT SUCH A PROCESS WOULD
RESULT IN A REVISED TENTATIVE ORDER THAT MORE EFFECTIVELY
ADDRESSES OUR MUTUAL GOALS. WE LOOK FORWARD TO REPORTING THE
PROGRESS OF THESE DISCUSSIONS AT YOUR NEXT MEETING



RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

March 10, 2004

Mr. John Robertus, Executive Officer
California Regional Water Quality
Control Board – San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123

Dear Mr. Robertus:

Re: Tentative Order No. R9-2004-001
NPDES No. CAS0108766

On behalf of the Riverside County Permittees, the District is submitting the attached specific comments and materials as an addendum to our comments on Tentative Order No. R9-2004-0012004. In addition to the specific comments, I am taking this opportunity to highlight some of the significant points that may have been overlooked in our presentations at the February 11, 2004 hearing.

The County, Cities, District and the Regional Board serve the same citizens of California. It is to our mutual benefit - and the benefit of these citizens - to develop a permit that is protective of receiving waters in a manner that is cost-effective and appropriate for the water quality conditions and needs of the Santa Margarita Region of Riverside County.

The Permittees are in Compliance with the CWA

The stormwater compliance programs implemented by the Riverside County Permittees are comprehensive. Their compliance programs address all of the requirements of the federal regulations. Specifically, the Riverside County Permittees are in compliance with the requirements of the Clean Water Act. In adopting the current permit, the programs implemented by the Riverside County Permittees were determined by your Board and the USEPA as meeting the MEP standard of the Clean Water Act. The only change to the MEP standard since adoption of the current permit has been the adoption of the SUSMP requirements by the State Water Resources Control Board. Our compliance programs, which have been featured in Stormwater Magazine, have expanded over the past five years. Nevertheless, in our permit renewal application, we proposed a number of enhancements to our compliance program, including the addition of elements to specifically address the SUSMP requirement.

The Permittees are Proactive and Progressive with Regard to Protecting the Beneficial Uses of our Natural Lands and Streams

Since 1990, the population in the Santa Margarita region has grown from 60,000 to 167,000. In response to this and other growth throughout the County, the Cities and County of Riverside began an earnest review of our land use policies. This review culminated in the adoption of the Western Riverside Multi-Species Habitat Conservation Plan, which will ultimately place over one half of the

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California Regional Water Quality
Control Board – San Diego Region
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Santa Margarita watershed in conservation. The areas conserved will largely center around existing hydrologic features such as Murrieta and Temecula Creeks and tributaries thereof. The Cities and County are also pursuing a Special Area Management Plan, which will provide for further integrated and cohesive protection for Waters of the U.S. within the watershed. Finally, the recently adopted Riverside County General Plan provided additional protections to ensure that the Santa Margarita watershed retains its rural character by limiting urbanization and requiring that urbanized areas be clustered. The General Plan also provides a number of additional stringent new development controls such as:

- Requiring setbacks from natural streams
- Maintenance of Open Space where possible
- Only allowing modification of major stream systems as a last resort
- Policy to address downstream impacts of new development

No Significant Impairments in the Santa Margarita Region

Unlike coastal San Diego and Orange Counties, there are no significant impairments associated with runoff from urban development in the Santa Margarita Region. Whereas Orange and San Diego Counties have approximately 115 impairments, the Santa Margarita Region has one - and it has been determined by your Board to be a low priority impairment. Also unlike the coastal counties, which have beaches and perennial streams, the Santa Margarita Region is dry.

The Permittees do not mean to imply that this lack of impairment places a limit to the Regional Board's authority. However, the Permittees request that the Regional Board keep this in mind when weighing the Permittees requests.

Existing Program is Effective

The population in the Santa Margarita Region has increased from 60,000 in 1990 to the current 167,000. However, the existing stormwater compliance programs have been notably effective in managing runoff from this urban development. Specifically, despite this rapid growth, the Santa Margarita Region still has only one low priority water quality impairment as compared with approximately 115 impairments that have been identified by your Board in the coastal counties. The SUSMP compliance activities and other enhancements to the compliance program proposed by the Permittees would further enhance the management of runoff from urban development. However, the compliance requirements proposed in the Tentative Order will provide no additional water quality protection beyond the existing and proposed Permittee programs. Furthermore, the requirements in the Tentative Order will be much more costly. This is no bargain for our citizens.

Mr. John Robertus, Executive Officer
California Regional Water Quality
Control Board – San Diego Region
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Request for Consideration of Economic Impacts

The Permittees understand the Regional Board's position that it is not required by State or Federal law to consider the economic impacts of the Permit. However, the Permittees would like to point out that neither is it prohibited. The Permittees would like to note that:

- The County is enforcing mandatory 5.4% cutbacks in services this fiscal year, with additional 8% cuts to follow next year.
- The District's available funding for the Santa Margarita Watershed NPDES programs will be 20% lower next fiscal year due to an exhaustion of surplus funds.
- The Cities of Temecula and Murrieta are facing similar fiscal constraints.

The Permittees have also determined that there are no alternative sources of funding realistically available to fund the urban runoff management program within FY 2004/2005 and perhaps for the foreseeable future. The Permittees therefore request that the Regional Board direct staff to work with Permittees to find ways to reduce Tentative Order mandated fiscal impacts on Permittee resources. Examples of potential cost savings that would not limit the authority of the Regional Board, or threaten degradation of Beneficial Uses of our waters are:

- Providing additional time to accommodate Ordinance Revisions and SUSMPs.
- Revising existing development provisions to accommodate existing Permittee Programs
- Revising Construction provisions to accommodate existing Permittee Programs.
- Revising the Monitoring and Reporting Program to provide practical utility.

Regional Board Directives

At the hearing, members of the Board provided several significant directives to Regional Board staff:

- The permit and monitoring program should recognize the differences between inland Riverside County and coastal San Diego and Orange Counties
- The tentative order requirements for inclusion of retail gasoline outlets in SUSMPs should be carefully weighed
- Residential BMPs equal education
- Duplicative inspection requirements should be eliminated
- Modifications of the Tentative Order's text to allow recent ordinances revisions required by the Santa Ana Region MS4 permit should be provided
- Staff should work with Permittees to address the aforementioned issues.

Following the February 11 Hearing, the Permittees proposed meeting with Regional Board staff to assist in addressing these directives and resolving other remaining issues. However, staff declined this invitation on the advice of counsel. Based on our experience in the renewal of the MS4 permit with the Santa Ana region, your Board and the Permittees are missing an important opportunity.

Mr. John Robertus, Executive Officer
 California Regional Water Quality
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Santa Ana Region Model

In May 2002 the Riverside County Permittees were at the same point in our MS4 permit adoption process with the Santa Ana Regional Board. However, the Santa Ana Regional Board staff, with the full knowledge and support of counsel and their Board, met with the Permittees throughout the summer to resolve permit issues. Our common goal was to develop an effective MS4 Permit that would be mutually supported. At the adoption in October 2002, the Permittees, Regional Board staff and the Board members all supported the adoption of the permit. The Regional Board members cited this process as a model for permit development. This mutual support was notable in contrast with every other recent MS4 permit adoption hearing in Southern California. This collaborative process has promoted cooperation in the development and implementation of compliance programs.

It is our hope that we will have the opportunity to work with your staff in this manner toward the same objective. To facilitate this process, the Permittees are submitting the following documents for your consideration:

- A redline mark-up of the Tentative Order addressing Board member comments and Permittee concerns;
- An alternative Monitoring and Reporting Program that is more reflective of the needs of the Santa Margarita Region;
- A series of seven White Papers summarizing the major revisions to the:
 - Construction Provisions;
 - Development Planning Provisions;
 - Existing Development: Municipal Provisions;
 - Existing Development: Industrial/Commercial Provisions;
 - Existing Development: Residential Provisions;
 - Construction Permit Fees;
 - Monitoring Program Executive Summary
- Additional White Papers:
 - Free and Open Access White Paper (Finding 18);
 - Cost Assessment: Draft Monitoring and Reporting Program;
 - Proposed Alternate Monitoring Program – Technical Summary;
 - The Tentative Order Should Contain An Economic Analysis (Revised)
 - An addendum to our January 28 comment letter.

The District, County and cities have invested considerable time and resources to analyze the Tentative Order, review and reflect on our existing stormwater programs and provide input on how the Regional Board's stormwater program expectations can be met in the most effective and cost efficient manner. These efforts are represented and contained in sum total within these comment

Mr. John Robertus, Executive Officer
California Regional Water Quality
Control Board – San Diego Region
Re: Tentative Order No. R9-2004-001
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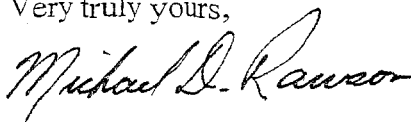
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documents. We trust that the Regional Board Staff and the Board members will carefully review and consider this extensive work product. We look forward to the opportunity to meet with your staff to review these documents and to develop a mutually supportable permit.

If you have any questions regarding this addendum to our comments, please contact me at 909.955.1250 or Jason Uhley at 909.955.1273.

Very truly yours,



for WARREN D. WILLIAMS
General Manager-Chief Engineer

Attachments: Markup of Tentative Order
Alternative Monitoring and Reporting Program
White Papers: Monitoring Program Executive Summary
Construction Provisions
Existing Development – Industrial/Commercial Provisions
Existing Development – Municipal Provisions
Existing Development – Residential Provisions
Development Planning Provisions
Free and Open Access, Finding 18
Construction Permit Fees
Cost Assessment: Draft Monitoring and Reporting Program;
Proposed Alternate Monitoring Program – Technical Summary;
The Tentative Order Should Contain an Economic Analysis (Revised);
Addendum to January 28 Comment Letter.

TTT:JU:bjp

SIGNATURES OF CO-PERMITTEES

THE CITY OF MURRIETA JOINS IN THE COMMENTS SET FORTH IN THIS LETTER.

SIGNATURE

James E. Kinley

PRINTED NAME

James E. Kinley

TITLE

Director of Public Works / City Engineer

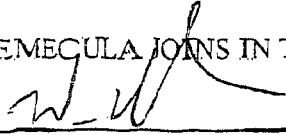
DATED

3-10-04

SIGNATURES OF CO-PERMITTEES

THE CITY OF TEMECULA JOINS IN THE COMMENTS SET FORTH IN THIS LETTER.

SIGNATURE



PRINTED NAME

WILLIAM HUGHES

TITLE

DIRECTOR OF PUBLIC WORKS/CITY ENGINEER

DATED

3-8-04

SIGNATURES OF CO-PERMITTEES

THE COUNTY OF RIVERSIDE JOINS IN THE COMMENTS SET FORTH IN THIS LETTER.

SIGNATURE Barbara Dunmore

PRINTED NAME Barbara Dunmore

TITLE Deputy County Executive Officer

DATED March 10, 2004

CONSTRUCTION PROVISIONS

As described in the Construction Database position paper the term "construction site" is defined as "Any project requiring a local grading or building permit, including projects requiring coverage under the General Construction Permit". This requirement is overly broad as each Permittee issues many building permits and can range from the mass grading of a site to a water heater installation. The revised Tentative Order incorporates the revisions proposed in the Construction Database position paper, including a definition of "construction site" consistent with the Phase II regulations.

As described in the Compliance Schedule position paper, additional time is needed for implementation where adoption of a new or revised ordinance is required. The revised Tentative Order incorporates the revisions proposed in the Compliance Schedule position paper.

As directed by the Board at the hearing on February 11, the Tentative Order should not require the Permittees to duplicate Regional Board activities. Section G.3.a) of the revised Tentative Order proposes text based on EPA Phase II Guidance (EPA, 2000c) and to clarify that Permittees are not required to review SWPPPs prepared required for the State General Construction Permit.

Under appropriate conditions and with implementation of appropriate controls, grading during the wet season need not be prohibited. Provision G.5.a)(2) has been removed, with a recognition that G.5.a)(4) requires Phased Grading and that G.5.c allows the Permittees to implement additional BMPs, such as stricter controls on phasing, during the wet season. Similarly, it is not always feasible to preserve riparian buffers and natural hydrologic features. Provision G.5.a)(6) & (7) include proposed text that riparian buffers and natural hydrologic features will be preserved where feasible.

Provision G.6. specifies the frequency of inspection of construction sites. As described in our presentation at the hearing on February 11, the inspection priority and inspection frequency should be based on the Permittee's assessment of the potential threat to water quality. This section of the revised Tentative Order proposes text consistent with the Permittee's request to prioritize facilities. The language is based on text from the Permittee's Santa Ana Permit.

The Chairman indicated at the February 11, 2004 Hearing that vested tentative maps and development agreements did not trump state or federal law, or by implication NPDES permits derived therefrom, on the basis of the exception language cited in Government Code §§ 65869.5 and 66498.1.c. However, the Permittees would respectfully point out that where the permit may contain requirements not supported by state or federal law then such requirements will necessarily fail where they come into conflict with the statutory scheme for Vested Tentative Maps (Government Code §§ 65864-65869.5) and Development Agreements (Government Code §§ 66498.1-66498.9). Moreover, in addition to the estoppel concerns raised earlier, constitutional prohibitions exist against state or federal governments from passing any law that impairs the obligations imposed by existing contracts. Such constitutional protections may presumably apply even to those contracts created by statute such as development agreements, subdivision improvement agreements, etc. See United States Constitution, Article I, § 10, Clause 1 and California Constitution, Article I, § 16. Provision G. 7. of the revised Tentative Order proposes text reflective of this limit of authority.

DEVELOPMENT PLANNING PROVISIONS

As described in the position paper regarding the compliance schedule, although the SUSMP can be developed in one year, an additional nine months will be required for the Co-Permittees to adopt needed ordinances and to implement this program. The revised Tentative Order proposes a revised compliance schedule consistent with the need for additional time for implementation. As the existing programs addressing new development have been effective in managing urban runoff, the requested modification to the compliance schedule will not impact receiving water quality.

Provision F.2.b)(1)(g) of the revised Tentative Order identifies 5,000 square feet as the minimum size for coverage under the SUSMP requirements. Also, consistent with the initial direction provided by the Chairman at the hearing on February 11, the provisions specific to Retail Gasoline Outlets (RGOs) has been deleted.

The revised Tentative Order proposes referencing the design criteria for control of velocities, volumes, durations, and peak rates in provision F.2.b)(2)(a) to the numeric sizing criteria guidelines in Provision F.2.b)(3). This would make it clear that the Permittees objective is to protect from erosion and habitat loss during common rainfall and flooding events. More extreme events, such as the floods of 1993, where more complex processes come into play, would not be regulated under these provisions. It should be noted that there are areas in the Santa Margarita Region where, due to channel stabilization or other considerations, control of velocities, volumes, duration and peak rates is not needed for downstream erosion and habitat maintenance and protection as proposed in Provision F.2.b)(2)(a) and F.2.b)(9) of the Tentative Order. To recognize this, the revised Tentative Order proposes that these controls will be implemented where needed.

Provision F.3 of the revised Tentative Order proposes text to clarify that applicability of the Provision is to runoff from proposed New Development and Significant Redevelopment projects.

EXISTING DEVELOPMENT: MUNICIPAL PROVISIONS

There are a number of facilities and activities operated by public agencies in the Santa Margarita Region that serve municipal functions, but are not owned, operated or otherwise under the jurisdiction of the Permittees. These include facilities operated on or by federal and state agencies, tribal lands, utilities and special districts. The revised Tentative Order clarifies the text to limit the municipal inspection program to those facilities under the jurisdiction of the Permittees. Further, the revised Tentative Order clarifies that each Permittee is responsible for inspecting its own facilities. The Permittees believe that these clarifying revisions are consistent with the intent of the Tentative Order Provisions.

Provision H.1.e of the Tentative Order requires the use of integrated pest management measures that rely on non-chemical solutions and native vegetation in municipal facilities and activities. However, these measures are not always feasible or appropriate. Some pest management needs are not adequately managed by non-chemical approaches (e.g., arundo control) and native vegetation is not appropriate for many applications, such as lawn areas for ball fields. The revised Tentative Order proposes to require implementation of these measures where feasible.

As described in the "Construction Permit Fees" position paper, a new section H.1.h. has been added to the revised Tentative Order to restore the General Construction Permit compliance provisions that were omitted from the Tentative Order.

EXISTING DEVELOPMENT: INDUSTRIAL/COMMERCIAL PROVISIONS

The Compliance Assistance Program (CAP) is an existing program implemented by the Permittees to provide for inspection of priority industrial and commercial facilities under the jurisdiction of the Permittees and provide for education of facility operators. The CAP cost-effectively builds upon existing inspection programs conducted by the Environmental Health Division of the County Health Department. The CAP has been successful and discharges of runoff from industrial or commercial development has not been identified as a source of water quality impairment in the Santa Margarita Watershed. With the continued implementation of the CAP and the IC/ID program, this potential source of pollutants will remain effectively controlled.

Expansion of the CAP to include additional facilities and/or inspection responsibilities is effectively precluded due to staffing limitations. Due to the amount of training required and technical expertise developed in a range of environmental disciplines, inspectors are aggressively recruited by other employers. As a result, Environmental Health has been unable to achieve full staffing of this group for several years, despite an ongoing recruitment and training program. Assignment of additional facilities for inspection or additional inspection responsibilities would impact the ability of the inspectors to meet their primary responsibilities related to hazardous materials or food services inspection. To address these concerns, the revised Tentative Order proposes to limit the inspection requirements to facilities either already addressed by the CAP, or facilities that the Permittees have identified as potential sources of pollutants (landscape operations, mobile operations, etc).

Consistent with the direction of the Regional Board to eliminate duplicative requirements at the February 11 hearing, the revised Tentative Order also deletes the requirement to review of monitoring data collected by industrial facilities per requirements of the General Industrial Activities Stormwater Permit. The Permittees believe that the intent of this requirement can be met by having the Regional Board staff coordinate with the Permittees when the Regional Board staff's review of monitoring data indicates a potential violation of Permittee ordinances.

The Tentative Order also proposes expansion of the existing inventories of industrial facilities to include a number of commercial activities. Where the commercial activities are mobile, the revised Tentative Order proposes that the inventories identify the base of operation. By locating the base of operations of legitimate mobile operators, the Permittees can ensure that local mobile businesses are implementing BMPs to eliminate non-stormwater discharges to MS4s. Since most mobile operations are still illegitimate businesses, though, response to complaint calls through the IC/ID program will likely still be a large factor in addressing mobile operations.

Finally, there are a number of industrial and commercial facilities in the Santa Margarita Region that are not under the jurisdiction of the Permittees. These include facilities operated on or by federal and state agencies, tribal lands, utilities and special districts. The revised Tentative Order clarifies the text to limit the inspection program to facilities under the jurisdiction of the Permittees.

EXISTING DEVELOPMENT: RESIDENTIAL PROVISIONS

At the hearing on February 11, the Board was clear in their direction that residential BMPs equate to education. The Permittees agree with this approach to the residential program for existing development and support the Board's direction. The revised Tentative Order proposes text to reflect this approach.

CONSTRUCTION PERMIT FEES

Provisions 15 through 19 of the Existing Order (No. 98-02, NPDES No. CAS0108766), consolidated stormwater compliance requirements for Permittee owned and/or operated construction projects within the watershed by acknowledging that Permittee Construction Activities are already covered under the MS4 Permit, and did not need separate coverage under the General Construction Permit. Permittee Construction Projects are required to comply with the General Construction Permit Provisions, however. The provisions require the Permittees to notify the Regional Board of proposed construction projects that would otherwise be covered under the State's General Permit for Storm Water Discharges Associated with Construction Activities General (General Construction Permit). In addition, the Permittees are required to prepare a storm water pollution prevention plan and implement a monitoring plan consistent with the requirements of the General Construction Permit. The Tentative Order omits these provisions for runoff from construction projects that are under ownership and/or direct responsibility of the Permittees. The Permittees request that these provisions, modified to be consistent with the new one-acre threshold, be included in the Tentative Order. The requested text is provided in section H.1.h of the markup of the Tentative Order provided in this comment package.

The omitted provisions eliminate the need for the Permittees to file an NOI with the State Water Resources Control Board and pay a filing fee for each construction project. Due to the potential number of construction activities conducted by the Permittees, inclusion of the permittee construction activity provisions is an item of significant operational and financial concern, especially in consideration of the current state and local fiscal crises. Not only is inclusion of these provisions consistent with the existing order, it is consistent with the actions of other Regional Boards, including the MS4 permit issued to the Riverside County Permittees by the Santa Ana Regional Water Quality Control Board [Order No. R8-2002-0011 (NPDES No. CAS 618033, Provision XII - Municipal Construction Projects/Activities) and the Colorado River Region Regional Water Quality Control Board [Order No. R7-01-077 (NPDES No. CAS 617002, Provision D – Specific Requirements and Prohibitions)]. In addition, this is consistent with the Caltrans Statewide MS4 permit issued by the State Water Resources Control Board (Order No. 99-06-Dwq, Provision H.2). Further, inclusion of these provisions is consistent with SWRCB policy to consolidate stormwater compliance requirements into individual permits. Finally, as noted in the tentative order, the permit covers discharges to and from the MS4, so runoff from permittee construction activities is already covered under the MS4 permit.

Finding 19 of the Tentative Order asserts that construction sites are subject to dual (state and local) storm water regulation. Consistent with Finding 19, Section G of the Tentative Order requires the Permittees to develop an inventory of construction sites and cover virtually everything required in the General Construction Permit. As the Permittees are already required to implement, inspect and enforce these construction requirements, the additional paperwork and transfer of resources from the Permittees to the State in the form of permit fees provides no additional public good.

MONITORING PROGRAM EXECUTIVE SUMMARY

The Santa Margarita Region is quite different from the areas covered by the monitoring programs in Orange and San Diego Counties. With the exception of the lowest reaches of Murrieta and Temecula Creeks and two short tributaries fed by springs, the Santa Margarita Region is ephemeral. The only area that can support REC1 beneficial uses is the Santa Margarita River. However, the flows in this area consist of imported water deliveries and rising groundwater - not urban runoff. Also, unlike the coastal counties, which have over 100 303(d)-listed impairments, many of which are high priority, the Santa Margarita Region has only one low priority impairment. In addition, the urbanized areas are localized and comprise a small percentage of the Santa Margarita Region (less than 10 percent currently, less than 15 percent at ultimate build-out), with much of this area in low and rural development. Finally, the population of the Santa Margarita Region is relatively small (currently 167,000 compared to the millions in the coastal counties). Clearly, a different, more limited set of monitoring requirements is warranted for the Santa Margarita Region.

The Tentative Order proposes extensive monitoring requirements that will provide information of limited use to the Permittees in developing and implementing their programs to manage runoff from urban development. For example, much of the proposed monitoring will address very low volume flows that infiltrate or pond before reaching a receiving water. The emphasis of the proposed monitoring program is on producing a large number of data points, rather than quality data with practical utility to urban runoff managers. The justification for the proposed monitoring program centers on a comparison of per capita costs, rather than data utility, water quality management, or scientific validity.

An alternative monitoring program is proposed which consists of five synergistic main components: Dry Weather Monitoring; Receiving Water Trend Monitoring; Receiving Water Sentinel (Triad) Monitoring; Regional Monitoring; and Special Studies. The focus of the alternative monitoring program is on protection of receiving water quality by providing data of more utility to urban runoff program managers and through identification and elimination of illicit discharges and minimization of "allowed" discharges. An increased emphasis on reconnaissance of the MS4 (dry weather monitoring) will result in the identification and elimination of illicit discharges. In addition to providing immediate water quality benefits, this approach will help the Permittees prevent conditions that could lead to future impairments.

Implementation of the revised monitoring program serves as a functional equivalent of a Toxicity Reduction Evaluation (TRE). For an industrial or municipal point source such as a POTW, a TRE will provide recommendations for treatment methods to reduce the concentration of the toxicant. In an MS4, adding a chemical or installing certain types of treatment devices are unrealistic, and the only practical action is to remove the source of the discharge. With the source eliminated during dry weather, it cannot contribute to impairment during storm conditions.

Quarterly dry weather (receiving water trend monitoring) monitoring of major tributaries may provide information to assist in identification of additional illicit discharges. Presence of flow or increased flow could also represent increased discharges from sources not under the Permittees' control, such as agricultural, utilities, tribal lands, other special districts, state and federal lands, or discharges permitted by the Regional Board. These flows will have to be controlled through the Regional Board's permit and enforcement processes.

Receiving water sentinel monitoring tracks watershed health at the bottom of the watershed and at a reference station within the same watershed. During dry weather, toxicity, chemical and bioassessment analyses will reflect habitat impacts due to rising groundwater, natural springs and

permitted discharges. During storm conditions, toxicity and chemical analyses will additionally include the inputs of discharges from urban, agricultural and open space, among others. Persistent elevated levels of toxicity or habitat degradation at a sentinel station in comparison with the reference station may indicate the need to monitor more tributaries along the impacted creek, and will also require the Regional Board to increase surveillance of discharges not under Permittee control. Funding for this increased monitoring is the responsibility of all dischargers in the watershed, not just the MS4 Permittees.

As urban land uses represent only about six percent of the Santa Margarita Region, the Permittees expect the Regional Board to take the lead in requiring the financial participation in implementing the monitoring activities that are not specific to the Permittees by other dischargers within the Region. These dischargers include other Phase I and II MS4 permittees including San Diego County and Caltrans, other dischargers permitted or allowed by the Regional Board including agricultural operators, and others as appropriate. Regional Board support for State and Federal funding is needed to support a larger watershed monitoring effort. Staff and financial support for the U.S. Bureau of Reclamation's watershed model will maintain a vital tool in evaluating potential impacts to the lower watershed and predicting future impacts due to changes in land use.

Response to specific Board member questions at the February 11th hearing:

Board Member Ghio

Break down per capita costs by permittee (transcript pg. 128, lines 7-11).

The total estimated cost to implement the Monitoring program proposed by Board staff is \$427,944. With 168,450 residents of the cities and County within the Santa Margarita Region, the estimated per capita cost to implement this monitoring program is \$2.54.

Board Member Wright

The Santa Margarita Watershed is not much different from the inland portions of Orange or San Diego Counties. The climate is similar and there are many lightly populated areas. Contact some of the inland cities and find out if they have issues similar to what the Santa Margarita Watershed permittees have asserted (pg. 127, lines 2-14).

Staff from the Cities of El Cajon, Encinitas, La Mesa, San Marcos, and Santee, as well as the County of San Diego and two consultants who serve these cities were contacted. Based on these contacts, we found:

- San Diego County receiving water sampling efforts are focused along the coast, as that is where most of the population resides, not in the inland areas that are similar to the Santa Margarita Region. Only dry weather sampling is conducted in the inland areas.
- Unlike the Santa Margarita Region, which primarily maintains earthen channels with ephemeral flow, the inland areas in San Diego County have many concrete-lined channels with continuous flow. Dry weather samples are collected in the concrete channels.
- The County contact noted that TREs are not a requirement of the San Diego County permit, and that TIEs were not required until the second year to allow for sufficient toxicity and bioassessment data to be collected to verify persistent impairment.
- The San Diego permit also allowed for analysis of existing data in the first year and identification of monitoring stations based on analysis of the existing data.
- There is, on average, one receiving water monitoring station for each watershed within San Diego County, *all of which are located near the coast*. Conversely, the monitoring program proposed

for the Santa Margarita Region requires three receiving water monitoring stations for a single inland subwatershed.

The Tentative Order Is Subject To Restraints Imposed By Drainage Law Principles Applicable To Both Public And Private Property Owners

The Regional Board offers the view that the Permittees, in their capacity as operators of MS4s, are in a position to refuse free and open access to their MS4s by upstream third parties that may be discharging pollutants (hidden or otherwise) into the MS4 system. See Finding No. 18, Sections A and B of the Tentative Order. This position is contrary to drainage law that has developed in California and in most jurisdictions across the United States.

The California Supreme Court in Locklin v. City of Lafayette, 7 Cal. 4th 348-361, 27 Cal. Rptr. 2d 613 (1994) observed that the civil law rule adopted in California over one hundred and thirty years ago, in refutation of the then-existing common law “common enemy doctrine”, gave an upstream owner an easement or servitude over a downstream parcel which allowed him to discharge surface waters as they naturally flow from his higher land onto the lower land of the servient owner. The lower receiving owner had no right to obstruct that flow. This also meant that the lower owner would be liable for damages to the upper owner if he interfered with such drainage right. The civil law rule was modified by the landmark decision in Keys v. Romley, 64 Cal. 2d 396, 50 Cal. Rptr. 273 (1966) which interjected a “reasonableness” test into the equation of liability between the upstream and downstream owners. Where alterations, improvements or obstructions on riparian property cause damage to another, the test becomes whether the landowner’s conduct was reasonable under the circumstances. This rule of reasonableness applies equally to private and public landowners, both upstream and downstream. Moreover, a similar rule of “reasonableness” has been specifically applied to flood control projects. See Bunch v. Coachella Valley Water Dist., 15 Cal. 4th 432, 63 Cal. Rptr. 2d 89 (1997) and Belair v. Riverside County Flood Control District, 47 Cal. 3d 550, 253 Cal. Rptr 693 (1988).

The Locklin Court noted that in Martinson v. Hughey, 199 Cal. App. 3d 318, 244 Cal. Rptr. 795 (1988), the rule of reasonableness was applied to a situation involving the discharge of both irrigation waters and surface waters into a watercourse. There a lower owner intentionally blocked a watercourse with debris which backed water up onto the land of two adjacent upper landowners. The court concluded: “The rule we deduce . . . is that the upper owner has the right to discharge reasonable and noninjurious amounts of irrigation water through natural areas of flow onto the lower owner’s property. The lower owner has a co-equal burden to receive reasonable and noninjurious amounts of irrigation water through natural flowage channels.” Id. 199 Cal. App. 3d at 328. The court concluded that the **lower owner had acted in an unreasonable manner when he blocked a drainage ditch in an attempt to refuse acceptance of surface and irrigation waters from the upper owners properties.**

The Regional Board and the Permittees must take heed of the legal considerations discussed above to the extent that a conflict arises with the terms of Tentative Order No. R9-2004-001. As demonstrated above, the Permittees do not have open latitude to reject the acceptance of drainage flows from third parties into the MS4s.

PROPOSED ALTERNATE MONITORING PROGRAM – TECHNICAL SUMMARY

To address concerns that the draft Monitoring and Reporting Program (M&RP) is not appropriate for the hydrologic characteristics and water quality conditions of the Santa Margarita Region, the Permittees have developed an alternate monitoring program. The alternate monitoring program embraces a watershed concept. It is designed to provide information to support programs to effectively manage potential and actual runoff from urban development under the Permittees' jurisdiction and to support general watershed management efforts to protect receiving water quality.

Characteristics of Santa Margarita Region

The Santa Margarita Region is quite different from the areas covered by the monitoring programs in Orange and San Diego Counties. During dry weather, most of the MS4s in the inland and coastal portions of the coastal counties have perennial flow fed by runoff from urban development. However, during dry weather there are no significant discharges from urban development to Murrieta and Temecula Creeks and the Santa Margarita River. Most of the MS4 discharges to the creeks that do occur in dry weather are very low volume and pond and evaporate or infiltrate within a short distance. With the exception of mountainous areas and the lowest reaches of Murrieta and Temecula Creeks and two short tributaries fed by springs, the Santa Margarita Region is ephemeral. The only waterbody that supports REC1 beneficial uses is the Santa Margarita River. However, the flows in the River within the Santa Margarita Region consist of imported water deliveries and rising groundwater - not urban runoff. Also, the coastal counties have over 100 303(d)-listed impairments, many of which are high priority. In contrast, the Santa Margarita Region has only one low priority impairment. In addition, the urbanized areas are localized and are a small percentage of the Santa Margarita Region, (less than 10 percent currently, less than 15 percent at ultimate build-out), with much of this area in low density and rural development. Finally, the population of the Santa Margarita Region is relatively small (currently 167,000 compared to the millions in the coastal counties).

Basis and Goals of Alternate Monitoring Program

The design of the alternate monitoring program is based on information from several sources. Recommendations for defining monitoring program goals from a scientific viewpoint were taken from efforts developed by the Southern California Coastal Water Research Project (SCCWRP) and the Santa Margarita Watershed Executive Management Team. The goals identified by the Executive Officer and in the draft M&RP were also considered. Watershed monitoring program design was based on SCCWRP's existing research and the design of other MS4 monitoring programs.

The proposed alternate monitoring program utilizes the draft M&RP goals and components and reprioritizes the program elements based on the following goals:

- Eliminate illicit discharges from the MS4;
- Evaluate long-term water quality trends;
- Evaluate watershed health;
- Efficiently manage the Permittee's urban runoff management program; and
- Effectively utilize finite Permittee resources.

The proposed alternate monitoring program consists of five synergistic main components:

- Dry Weather Monitoring
- Receiving Water Trend Monitoring

- Receiving Water Sentinel (Triad) Monitoring
- Regional Monitoring
- Special Studies

Dry Weather Monitoring

The MS4 permit requires that the Permittees effectively prohibit the discharge of non-storm water into their respective MS4s and to Waters of the U.S. Due to the ephemeral nature of the Santa Margarita Region, flows are not expected to be present in receiving waters during dry weather. If flow is encountered, its source must be located, and if determined to come from an illicit discharge, steps must be taken to remove the discharge. The most efficient way to find illicit discharges in an ephemeral watershed is to regularly inspect areas of the MS4 most likely to convey illicit discharges, such as from industrial and commercial land uses or areas of high density residential populations. Where flows are observed their sources can be identified. Illicit flows can be eliminated and the Permittees can work with dischargers of allowed flows to implement BMPs to manage runoff quality and to reduce their discharges.

The dry weather monitoring element of the alternate monitoring program builds upon existing efforts to identify and remove illicit discharges to the MS4. It is essentially the same as proposed in the draft M&RP (II.B.), but with a higher priority. Station selection consists of both proactively selecting areas along the MS4 that are most likely to receive illicit discharges and reactively responding to complaints and unexpected problems encountered by Permittee field staff. Dry weather monitoring involves inspecting selected areas of the MS4 on a scheduled basis, taking steps to eliminate illicit discharges, and collecting samples of unidentified discharges as appropriate to evaluate the discharge for further action, identification of potential source(s), and for evidence in possible enforcement action.

There is a long history of agricultural activities within the Santa Margarita Region. As a result, localized discharges may not be from urban runoff, and the Permittees do not have jurisdiction to require the removal of agricultural discharges.

Receiving Water Trend Monitoring

With the increased removal of illicit discharges from the MS4, there should be no flow due to urban runoff in the tributaries that feed Murrieta and Temecula Creeks during dry weather. The most cost-effective way to verify this is to monitor flow and water quality in the tributaries upstream of their confluence with Murrieta and Temecula Creeks. The goal is to look for large-scale evidence of increasing flows that may indicate additional discharges, while Dry Weather Monitoring entails frequent inspections and sampling that focuses on smaller-scale areas.

Receiving water trend monitoring tracks short-term changes and long-term trends in chemistry and flow at major tributaries. Quarterly dry weather monitoring of major tributaries may identify additional illicit discharges and may result in reprioritization of MS4s along these tributaries for increased surveillance. Where discharges are from sources not under the Permittees' jurisdiction, they will be referred for control under the Regional Board's regulatory authorities. Receiving water trend monitoring is taken from the mass loading component (II.A.1) of receiving waters monitoring stations in the draft M&RP.

Receiving Water Sentinel (Triad) Monitoring

The Santa Margarita Region is subdivided into two major drainage areas, for Temecula and Murrieta Creeks. The Dry Weather and Receiving Water Trend monitoring will result in the removal of illicit discharges from the Region. Chemistry alone, however, will not show if there are impacts to the environment from urban runoff discharges. Toxicity monitoring and bioassessment will evaluate ecosystem health and show if the Urban Runoff Management Program (URMP) has been effective.

The purpose of receiving water sentinel monitoring is to track changes in watershed health using the triad approach of chemistry, toxicity and bioassessment, and to confirm whether the URMP is working. Receiving water sentinel monitoring, identified as Receiving Waters Monitoring (II.A.) in the draft M&RP, tracks watershed health at the bottom of the watershed and at a reference station within the same watershed under similar climatic and hydrologic conditions.

Continual dry weather flows required for toxicity and bioassessment occur only at the bottom of the watershed where groundwater rises to the surface. The presence of this rising groundwater confounds evidence of urban runoff impacts as these flows may reflect natural deposits or even past agricultural land uses. During dry weather, toxicity, chemical and bioassessment analyses will reflect habitat impacts due to rising groundwater, natural springs, and permitted discharges. During storm conditions, toxicity and chemical analyses will additionally include the inputs of discharges from urban, agricultural and open space, among others. Persistent elevated levels of toxicity or habitat degradation at a sentinel station in comparison with the reference station may indicate the need to monitor more tributaries along the impacted creek, and will also require the Regional Board to increase surveillance of discharges not under Permittee control. Funding for this increased monitoring is the responsibility of all dischargers in the watershed, not just the MS4 Permittees.

Another confounding factor in bioassessment is that the habitat expected in the assessment may not be present in an ephemeral system. The absence of this expected habitat may result in a ranking of "moderate" or "poor" and is not a reflection of urban runoff discharges.

The triad approach decision matrix (II.A.4.) has been modified to be consistent with San Diego County's matrix. The San Diego County MS4 permit requires implementation of a Toxicity Identification Evaluation (TIE) [II.A.4.a)] based on triad matrix recommendations, and does not require conducting a Toxicity Reduction Evaluation (TRE) [II.A.4.b)]. Implementation of the proposed alternate monitoring program serves as a functional equivalent of a TRE. For an industrial or municipal point source such as a POTW, a TRE will provide recommendations for treatment methods to reduce the concentration of the toxicant. In an MS4, adding a chemical or installing certain types of treatment devices are unrealistic, and the only practical action is to remove the source of the discharge. With the source gone, it cannot contribute to impairment during storm conditions.

Regional Monitoring

Regional Monitoring [unnumbered; follows II.A.4.b)] and Special Studies (unnumbered; follows Regional Monitoring) requirements have been retained, although the specific special study to develop numeric criteria to control runoff from new developments proposed in the draft M&RP has been removed. The requirement for the study is based on a Water Resources Impact article that indicates that several current methods to address increased runoff do not adequately address erosive velocities. The Permittees developed increased runoff and erosion control criteria that exceeds the standards referenced in the Water Resources Impact article. The criteria, which have been in place for over 9 years, address a full array of storm durations and frequencies and also require erosive velocity control

at outlet structures. It should be noted that increased runoff control would have done nothing to mitigate the severe channel erosion and flooding problems that occurred during the 1993 floods.

Coordination of Regional Monitoring Activities

Urban land uses currently represent only about six percent of the Santa Margarita Region. In addition, there are many other discharges to receiving waters in the Santa Margarita Region that are not under Permittee control, including rising groundwater and springs, agricultural runoff, discharges from tribal lands, runoff from special district, state and federal lands, and discharges permitted or allowed by the Regional Board. In implementing the alternate monitoring program, the Permittees expect that the Regional Board will exercise its authorities to require these parties to participate in funding monitoring activities that are not specific to runoff from urban development under the Permittees' jurisdiction and monitoring to evaluate other sources. In addition, the Permittees expect the Regional Board to provide leadership in seeking state and federal funding for watershed monitoring and special studies not specific to urban runoff management. The U.S. Bureau of Reclamation's watershed model is an example.

Reporting Program

The Reporting Program (III.) has remained unchanged.

Alternate Monitoring Program Cost Estimate

The table below provides an estimate of costs for the proposed alternate monitoring program. The per capita cost is \$1.48.

Alternate SMR Monitoring Program Cost Summary		
Program Costs		
	Base cost	Incl. OT
Permittee estimate of Receiving Water Sentinel Monitoring costs	\$46,911	
Permittee estimate of Dry Weather Monitoring costs	\$13,120	
Permittee estimate of Receiving Water Trend Monitoring costs	\$3,968	
Total monitoring costs	\$63,999	
Permittee estimate of Receiving Water Sentinel Monitoring labor costs	\$32,296	\$45,874
Permittee estimate of Dry Weather Monitoring labor costs	\$4,643	
Permittee estimate of Receiving Water Trend Monitoring labor costs	\$1,741	
Physical costs (rating cks, report prep, vehicles, consultant)	\$146,000	\$146,000
Total labor costs	\$184,680	\$191,874
Total monitoring & labor costs	\$248,679	\$255,873
Special study costs not estimated		
Per Capita Costs		
Riverside County population est.	\$168,450	
Permittee est of per capita Sentinel Monitoring costs	\$0.28	
Permittee est of per capita Recon Monitoring costs	\$0.08	
Permittee est of per capita Trend Monitoring costs	\$0.02	
Permittee est of per capita labor (All) costs	\$1.10	\$1.14
Total Permittee est per capita costs	\$1.48	\$1.52

In summary, the proposed alternate monitoring program:

- Focuses on removing illicit discharges;
- Collects water quality data that will provide information needed for the Permittees to manage their urban runoff;
- Is consistent with watershed-based monitoring program goals;
- Works to build a coalition of dischargers to better assess the overall watershed conditions.

COST ASSESSMENT: DRAFT MONITORING AND REPORTING PROGRAM

Although the draft Monitoring and Reporting Program (M&RP) includes discussions of specific legal authority and monitoring program requirements, no information is provided regarding the technical justification or validity of the proposed program. Rather, the Fact Sheet attempts to justify the appropriateness of the draft M&RP based on per capita costs. Had the hydrologic and water quality conditions in the Santa Margarita Region relative to the coastal counties been considered in developing the M&RP, one would have expected reduced monitoring requirements and lower per capita costs. However, as discussed below, the per capita monitoring burden on the Santa Margarita Region is approximately three to four times greater relative to the coastal county requirements.

While per capita costs may initially appear to provide a fair comparison of relative monitoring burdens, such a comparison fails to account for differences in available resources. Resources available to cities and the County are a function of property values and the number of residential, commercial and industrial properties in each county, which has a significant bearing on how much taxes or fees can be collected that could be used to fund the monitoring program. Nor does a per capita cost comparison take into account average salaries, which represents the proportional burden carried by the per capita cost. The following table summarizes median household income and property values for the three counties in the San Diego Region:

<i>Income and Property Values Summary</i>			
	Median 1999 Household Income	Median 2000 Housing Value	Median 2000 Housing Rent
Riverside County	\$40,729	\$134,389	\$566
San Diego County	\$50,241	\$246,727	\$805
Orange County	\$60,048	\$277,803	\$949

Source: California Department of Finance

In the Fact Sheet (IX.A.2.) discussion of monitoring program requirements, the EPA Phase I Parts 1 and 2 monitoring requirements, the framework that the SDRWQCB uses in developing the receiving waters monitoring program, and monitoring program costs are reviewed. However, the Phase I monitoring requirements do not apply to this Permit as the Permittees applied for and were granted an Early Permit by the SDRWQCB with the support and approval of USEPA Region IX, which superseded these requirements.

Estimated draft monitoring program costs for the Santa Margarita Region presented in the Fact Sheet are described as reasonable compared to monitoring programs that have been designed and implemented by the SDRWQCB for the coastal counties. This assessment is based on a comparison of per capita costs for San Diego, Orange and Riverside Counties. Pages 68 and 69 of the Fact Sheet contain a discussion and tables describing how per capita monitoring costs were calculated for the coastal counties and an estimate of what Santa Margarita Region Permittees should be expected to pay based on equivalent per capita costs. As previously noted, there is no discussion on how the scientific design of the draft monitoring program is reasonable for the hydrologic and climatic conditions of the watershed.

The Fact Sheet suggests that a reasonable cost for the Riverside County M&RP should be based on an average of the per capita costs for the coastal counties. However, the per capita cost estimates presented in the Fact Sheet contain significant errors. For example, Table 6 of the Fact Sheet lists the Orange and San Diego County populations as 2,800,000. The correct population figure is 2,900,000.

The listed Orange County annual budget includes the cost of dry weather field screening, but the San Diego budget does not. Calculation of an average where the two figures are not on the same basis is invalid. Further, the Riverside County M&RP budget in the table does not include labor costs, as do the budgets presented for the coastal counties. An estimated labor cost of \$20,000 was presented to Regional Board staff by the Permittees during an earlier workshop. This estimate was not included in the tentative Fact Sheet. The sum of these errors and omissions results in a significant underestimate of the relative per capita costs of the proposed M&RP for the Santa Margarita Region relative to the coastal counties.

Table 8 of the Fact Sheet presents an estimation of annual costs for the draft M&RP. Under the Monitoring Component column, the number of station events for wet and dry mass loading is listed as 30 station events per year. With seven stations, and five samples collected at each station, there are actually 35 station events per year. Likewise for toxicity monitoring, the number of station events should be listed as 28 (seven stations times four sampling events) rather than 24. These errors further underestimate the per capita cost of the proposed M&RP.

In addition to the underestimated costs, the cost information presented in the Fact Sheet is inconsistent. For example, on page 68 the average per capita cost is shown as \$0.57, with the equivalent amount to budget calculated as \$97,000. Multiplying \$0.57 with 168,450 gives \$96,016. On Table 8, the estimated annual cost for the proposed M&RP is \$122,068, which equates to \$.72 per capita, much higher than the \$.57 average, and almost as high as the Orange County per capita cost. This does not include potential costs for TIE/TRE requirements or the required special study.

The sum of these calculation errors is an underestimate of the fiscal impact of the monitoring requirements on the citizens in the Santa Margarita Region. The Permittees recalculated Fact Sheet Tables 6 and 8 based on the above discussion. The corrected per capita costs computes to \$0.82, significantly higher than that of either of the coastal counties that have greater populations, continuous discharges of urban runoff, REC1 receiving waters, and many high priority receiving water impairments.

Fact Sheet Table 6. MS4 Monitoring Program Budget Comparison for 2002-2003

Fact Sheet Information				Corrected Values		
Permitted Area	~ Annual Budget	Population	~ Annual Per Capita Cost	~ Annual Budget	Population	~ Annual Per Capita Cost
Riverside County	\$20,000	168,450	\$0.12	\$40,000	168,450	\$0.24
Orange County	\$2,200,000	2,800,000	\$0.79	\$2,200,000	2,900,000	\$0.76
San Diego County	\$1,000,000	2,800,000	\$0.36	\$1,000,000	2,900,000	\$0.34

Fact Sheet Table 8. Estimated Annual Cost of New Monitoring in
The Upper Santa Margarita Watershed

Fact Sheet Information			Corrected Values	
Monitoring Component	~ Cost per Station Event	Annual Cost	~ Cost per Station Event	Annual Cost
Wet and Dry Mass loading (30 station events/year)	\$850	\$25,500	$7*5 = 35$ station events/yr	\$29,750
Toxicity (24 station events/year for 2 species)	\$3,067	\$73,608	$7*4 = 28$ station events/yr	\$85,876
Bioassessment (8 station events/year)	\$2,870	\$22,960	\$2,870	\$22,960
TIEs	\$3,000 per species	Depends on toxicity results		
TREs	Depends on the complexity of the source identification process	Depends on toxicity and TIE results		
ESTIMATED TOTAL		\$122,068		\$138,586
Per capita cost		\$0.72		\$0.82

The Permittees also estimated analysis and labor costs of the draft monitoring program based on actual labor costs, contract laboratory costs, and time needed to conduct current sampling efforts. The table is presented below. The per capita costs, including laboratory analysis, staff time and overhead, and physical costs, is estimated to actually be \$2.54. These costs do not include the required special study.

Draft Permit SMR Monitoring Program Cost Summary

Program Costs		
	Base cost	Incl. OT
Permittee estimate of proposed Core Monitoring costs	\$163,143	
Permittee estimate of proposed Dry Weather costs	\$16,523	
Total monitoring costs	\$179,666	
Permittee estimate of Core Monitoring labor costs	\$77,452	\$110,448
Permittee estimate of Dry Weather labor costs	\$34,826	\$52,239
Physical costs (rating cks, report prep, vehicles, consultant)	\$136,000	\$136,000
Total labor costs	\$248,278	\$298,687
Total monitoring & labor costs	\$427,944	\$478,353
Special study costs not estimated		
Per Capita Costs		
Riverside County population est.	\$168,450	
Permittee est of per capita Core Monitoring lab costs	\$0.97	
Permittee est of per capita Dry Weather lab costs	\$0.10	
Permittee est of per capita labor (Core & Dry) costs	\$1.47	\$1.77
Total Permittee est per capita costs	\$2.54	\$2.84

In summary, the draft monitoring program is not based on scientific principles and is justified in the Fact Sheet based on relative per capita costs. However, the per capita cost calculations contain many errors and omissions, which significantly underestimate the expected cost burden on the citizens of the Santa Margarita Region. When the errors and omissions are corrected and actual analysis and labor costs are considered, the calculated cost burden is more than *four* times what was presented as the average of Orange and San Diego County's per capita costs, and more than *three* times greater than Orange County's per capita cost burden. Counter to the assertion made in the Fact Sheet (bottom of pg. 67), the estimated monitoring program costs are not reasonable.

THE TENTATIVE ORDER SHOULD CONTAIN A COST/BENEFIT ANALYSIS
(REVISED)

The Permittees have fundamental concerns about the way in which the Tentative Order proposes to manage runoff from urban development as an element of the overall water quality management program. Chief among these concerns is the prescriptive nature of the Tentative Order, which mandates implementation of a number of programs, none of which will address an identified water quality problem or promise to provide a significant water quality benefit. Further, these programs are mandated without consideration of the funding and staffing resources that will be required to implement these programs.

The cornerstone of the National Pollutant Discharge Elimination System is the concept that the discharge of pollutants from municipal storm sewers must be controlled "to the maximum extent practicable". The MEP standard is set forth in Section 402(p) of the Clean Water Act, which requires that NPDES permits shall:

require controls to reduce the discharge of pollutants **to the maximum extent practicable**, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

(33 U.S.C. § 1342(p).)(Emphasis added.) Almost by definition, the MEP standard requires a weighing of the costs and the benefits of any program to enhance water quality. (See, e.g., 64 Fed.Reg. 68722, 68754 (Dec. 8, 1999); Clean Water Initiative, p. 119; Board Order WQ 2000-11, p. 10.)

In addition, State law requires that the Regional Board consider the costs and the benefits associated with the development of Basin Plans. Pursuant to Water Code Section 13263(a), the Regional Board must consider all of the factors set forth in Water Code Section 13241 when issuing an MS4 permit. Water Code Section 13241 only authorizes the Regional Board to require water quality conditions "that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area." As part of its analysis, the Regional Board must take into account "economic considerations". (Water Code § 13241(d). Therefore, responsible public process calls for consideration of cost/benefits (supported by analysis and quantified costs) for permit requirements which implement Basin Plans. This is particularly critical in the Tentative Order for the Santa Margarita Region where numerous new requirements are proposed that potentially pose significant expense to municipal budgets with no identified funding sources. No evidence is presented in the Water Quality Control Plan for the San Diego Basin (9)¹ that economic considerations were addressed. More specifically, no evidence is presented to indicate that a review of economic considerations as they relate to regulation of municipal separate storm sewer systems were addressed in developing this plan. If documentation of such a review of economic considerations is available, the Permittees request that such documentation be produced for review prior to adoption of the Tentative Order.

64 Fed Reg 68722 & 68723 require flexible interpretation of the MEP concept based on site-specific characteristics and "cost considerations as well as water quality effects..." Thus, the Regional Board is also advised in the Federal Regulations to consider costs as a factor in determining the reasonableness and practicality of permit requirements.

¹ "Water Quality Control Plan for the San Diego Basin (9)", California Regional Water Quality Control Board, San Diego Region, September 8, 1994.

Therefore, under both federal and state law the Regional Board must consider the costs and the benefits of the Tentative Order. More fundamentally, the public demands consideration of economic factors in the establishment of all public policy, including public health and safety, education, homeland security and even defense. There is nothing to justify not considering economic factors in establishing requirements for public management of stormwater quality, especially in light of the current and expanding State and local fiscal crises. However, nothing in the Tentative Order or related documents indicates that such an analysis has taken place. The Permittees are very concerned about the costs associated with implementing the program set forth in the Tentative Order. We would like to see a weighing of these costs with the benefits to be derived from some of the components of the program, especially those components such as the construction and industrial inspections that are currently being conducted by other entities, including the Regional Board.

While the Permittees share the Regional Board's goal of water quality protection, the Board of Supervisors and the City Councils have been elected by the citizens of California within the Santa Margarita Region to prioritize and balance finite public resources to provide many important public facilities and services. In addition to management of runoff quality from urban development, the Cities and County are responsible for providing police and fire services, libraries, infrastructure maintenance, parks, roads, drainage facilities, affordable housing, habitat conservation, environmental quality protection and many other municipal facilities and services. Although each of these needs are important, the realities of municipal finance do not permit any need to be funded without consideration of competing needs and priorities. The prescriptive requirements proposed in the Tentative Order preclude the local elected officials the opportunity to balance water resource needs with other resource needs. Further, our elected officials and the citizens of California within the Santa Margarita Region rightfully demand that expenditures be justified in terms of demonstrated local need and effectiveness of the proposed programs in addressing the local need. Therefore, even if a cost/benefit analysis were not required, prudent public policy demands that such an analysis be conducted.

A meaningful cost/benefit analysis cannot be prepared by the Regional Board's engineers and scientists alone. Such an analysis of cost and implementation impacts will require the full participation of the Permittee financial, legal and program staff.

ADDITIONAL COMMENTS REGARDING
TENTATIVE ORDER NO. R9-2004-001
NATIONAL POLLUTION DISCHARGE
ELIMINATION SYSTEM (NPDES) CAS0108766

**Construction Industry Coalition On Water Quality's (Cicwq) Letter,
 Comments On Municipal Stormwater Permit For Santa Margarita Watershed, Dated January
 28, 2004**

The Permittees have reviewed CICWQ's letter to the RWQCB, dated January 28, 2004. The Permittees are incorporating several of CICWQ's comments by Reference:

Findings Comments Nos. 1, 2, 3, 7 and 8;
 Prohibition Comment No. 1;
 Development Planning Comment Nos. 1, 3, 4, 7, and 8; and
 General Comment Nos. 1, 2, 3, 4, 5, and 6.

ADDITIONAL COMMENTS

In addition to our initial comment letter, the District is including the following comments to Tentative Order No. R9-2004-001:

FACT SHEET COMMENTS

- 1) Section V.C. Page 10. C. Description of Permitted Area (Finding No. 3) - 2nd paragraph:

According to the *Final 2002 CWA section 303(d) List of Water Quality Limited Segments* (SDRWQCB, 2002a), the entire length of Murrieta Creek (1.8 miles) and the upper portion of the Santa Margarita River (17.5 miles) are impaired for phosphorus, and the Santa Margarita Lagoon is impaired because of eutrophication.

Comment to Section V.C. Page 10. C. Description of Permitted Area (Finding No. 3) - 2nd paragraph:

The Permittees recommend that Section C be revised to incorporate the following additional facts:

Temecula Creek (30 miles, 366 sq. mi. watershed) and Murrieta Creek (12¹ miles, 222 sq. mi. watershed), join to form the Santa Margarita River, near the city of Temecula. The Santa Margarita River flows for 1.8 miles within Riverside County, then another 35.2 miles through San Diego County before ending at the Santa Margarita Lagoon.

The climate in the upper Santa Margarita watershed is characterized as semi-arid with an average annual precipitation of 12-16 inches in the urbanized areas. Murrieta and Temecula

¹ The lengths for Murrieta Creek and the Santa Margarita River are incorrect in the draft permit fact sheet. The lengths noted come from the 2002 303(d) list.

Creeks are perennial interrupted streams, i.e., they include reaches in which the flow is continuous and others where flow is ephemeral. The areas of perennial flow are located in mountain area tributaries. The perennial flows infiltrate within a short distance of reaching Murrieta or Temecula Creeks. Groundwater surfaces approximately one-quarter to one-half mile upstream of the confluence of Murrieta and Temecula Creeks where the bedrock is much closer to the surface. The creeks in the urbanized areas of the watershed, located primarily in the valley, are ephemeral and flows are observed only during and immediately after significant storm events.

The rising groundwater which constitutes the flow in the Santa Margarita River is currently augmented by imported water deliveries by Rancho California Water District downstream of the confluence. In the past, a 2 MGD live-stream discharge of treated effluent was discharged to Murrieta Creek. During dry weather, runoff from urban development is minor, rapidly infiltrates and does not contribute to downstream pollutant loading. The only flows that reach the lagoon from the upper Santa Margarita Watershed would be from rising groundwater and the imported water deliveries.

Urban development comprises only six percent of the total area of the upper Santa Margarita River watershed. During wet weather, only a small portion of the flows within the Santa Margarita River would be generated from urban areas. Flows reaching the lagoon would be comprised primarily of runoff from agricultural land and lands not under Permittee jurisdiction, such as from San Diego County, tribal, federal, state, and other special district properties, in addition to those of urban land uses.

Murrieta Creek and the Santa Margarita River are listed as impaired for phosphorus based on evidence of persistent exceedence of the Basin Plan Objective of 0.1 mg/L for Phosphorous. The objective for phosphorus is based on a study of the levels of phosphorus needed to restore the Florida Everglades, a marsh with severe eutrophication. There is neither a primary (health-based) nor secondary (aesthetic) drinking water maximum contaminant level for phosphorus.

Within the Santa Margarita watershed, only the Santa Margarita Lagoon in the lower watershed has been determined to be impaired by eutrophication. In the upper watershed, there are many land uses other than urban, including agricultural, tribal, other special districts, state, and federal. There is a long history of agricultural land uses in the upper watershed, and the presence of nutrients such as phosphorus is still evident in the rising ground water. The only waterbody listed as high priority for nutrients is Rainbow Creek in the lower watershed. A TMDL is in the process of being developed by the Regional Board for Rainbow Creek. According to the Water Body Fact Sheet² to support the listing for Rainbow Creek, its designation as "eutrophic" was changed to impaired for "nitrate" and "phosphorus" because "[t]he original designation was based upon a faulty assumption that eutrophic conditions existed because of the elevated levels of nutrients. Data collected for development of the TMDL has revealed that eutrophic conditions do not exist, but concentrations of nitrate and phosphorus in excess of Basin Plan objectives do exist."

² 2002 CWA Section 303(d) List of Water Quality Limited Segments, Volume III: Regions 5-9, pgs. 9-79 to 9-80.

Attachment A includes information related to phosphorus concentrations in the Santa Margarita Watershed. The graphs show phosphorus concentrations from Rancho California Water District's live stream discharge to Murrieta Creek, their discharge of raw potable water from the System River Meter to Murrieta Creek, and receiving water data for Murrieta, Temecula, and Rainbow Creeks, and the Santa Margarita River analyzed by the District, RCWD, EMWD, Camp Pendleton, and the Regional Board. Several items stand out in reviewing the graph:

- Phosphorus levels in the potable water discharge to the Santa Margarita River occasionally exceed the BPO
- Phosphorus levels tended to be lower in the receiving water station than in the live stream discharge, indicating that Murrieta Creek assimilated the phosphorus.
- Phosphorus levels in Temecula Creek tend to be higher than in the Santa Margarita River, indicating that the River is assimilating or diluting the phosphorus from Murrieta and Temecula Creeks.
- Phosphorus levels in general vary between 0 and 1 mg/L in the upper Santa Margarita River watershed, and down the Santa Margarita River to the DeLuz crossing. Levels are consistently much higher at the Estuary.

2) Section VI.B, Page 11 and 12. Pollutants of Concern in the Upper Santa Margarita Watershed:

.....A recent environmental assessment of Murrieta Creek (U.S. Army Corps of Engineers, 2000) describes some of these concerns:

"Since the 1980's, rapid development and urbanization in Murrieta Creek's watershed, including its floodplain and riparian corridor, has severely altered the watershed's drainage. The urbanization has simultaneously introduced artificial flows from activities such as landscape irrigation, washing down of parking lots, and washing of personal vehicles, and has increased impervious surface, which reduces groundwater recharge. Consequently, the volumes and velocities of the discharges from the surface flows and flows through the stormwater conveyance systems into Murrieta Creek have increased dramatically. The changes in the hydrology and the hydraulics of Murrieta Creek and its watershed caused by development, flood control activities, ground water dewatering, and a reduction in groundwater recharge, have upset the natural fluvial processes and greatly diminished the ecological value of Murrieta Creek and its riparian corridor. The increased volumes and velocities have intensified the erosion along the stream bed and banks of Murrieta Creek, its tributaries, and downstream of Murrieta Creek. This erosion has exacerbated the sediment loading into Murrieta Creek and the Santa Margarita River."

The assessment goes on to say that, without appropriate controls, water quality is expected to continue to decline. "Advancing erosion and downcutting of stream channels will continue to feed larger amounts of sediment into the system. [...] Increasing development of the watershed is expected to continue to impact available habitat. In addition, an elimination of infiltration zones, increase in peak discharges with associated impacts on downstream riparian area, and the

replacement of native plants with non-native species would likely occur." (U.S. Army Corps of Engineers, 2000)

Comment to Section VI.B, Page 11 and 12: Pollutants of Concern in the Upper Santa Margarita Watershed:

The referenced quote is from Coordination Act Report (CAR), July 2000, prepared by United States Fish and Wildlife Services (USFWS) for the Murrieta Creek Project. The CAR is intended to partially assess the biological conditions in the study area and partially assess the potential impacts of fish and wildlife resources from implementing the USACOE recommended plan. The referenced quote was made by the United States Fish and Wildlife Service as part of a biological opinion in opposition of the proposed project. There are many inaccurate statements made within the CAR. In addition, the USACOE's Environmental Impact Report (EIR) conclusion, with regards to the project's impacts, do not support the statement made above. The EIR goes further to identify water quality benefits from the proposed project. Despite the comments made within the CAR, the USACOE approved the project.

3) Section VI.B, Page 12, Table 1:

Table 1. Impairments and Constituents of Concern*

Waterbody	Beneficial Uses	CWA 303(d) Impairment	Constituents of Potential Concern
Murrieta Creek	MUN, AGR, IND, PROC, GWR, REC1*, REC2, WARM, WILD	Phosphorus	Sedimentation/siltation, iron, manganese, total dissolved solids
Temecula Creek	MUN, AGR, IND, PROC, GWR, REC1*, REC2, WARM, WILD		Sedimentation/siltation,
Santa Margarita River	MUN, AGR, IND, REC1, REC2, WARM, COLD, WILD, RARE	Phosphorus (upper 17.5 miles) Eutrophication (lagoon)	Sedimentation/siltation, iron, manganese, sulfate, total dissolved solids

MUN – Municipal and Domestic Supply – Uses of water for community, military, or individual water supply systems (i.e., drinking water).

AGR – Agricultural Supply – Uses of water for farming, horticulture, or ranching.

IND – Industrial Service Supply – Uses of water for industrial activities that do not depend primarily on water quality (i.e., mining, cooling water supply, gravel washing, fire protection).

PROC – Industrial Process Supply – Uses of water for industrial activities that depend primarily on water quality.

GWR – Ground Water Recharge – Uses of water for natural or artificial recharge of ground water for purposes of future extraction, maintenance of water quality, or halting of saltwater intrusion into freshwater aquifers.

REC1 – Contact Water Recreation – Uses of water for recreational activities involving body contact with water, where ingestion of water is reasonably possible (i.e., swimming, wading, fishing, and white water activities). * Means this is a potential use.

REC2 – Non-contact Water Recreation – Uses of water for recreational activities involving proximity to water, but not normally involving body contact with water (i.e., picnicking, hiking, camping, boating, and sightseeing).

WARM – Warm Freshwater Habitat – Uses of water that support warm water ecosystems.

COLD – Cold Freshwater Habitat – Uses of water that support cold water ecosystems including.

WILD – Wildlife Habitat – Uses of water that support terrestrial ecosystems.

RARE – Rare, Threatened, or Endangered Species – Uses of water that support habitats necessary, at least in part, for the survival and successful maintenance of plant and animal species established under state or federal law as rare, threatened, or endangered.

Comment to Section VI.B, Page 12, Table 1:

On Table 1 on Page 12 of the Fact Sheet, Temecula Creek should not be included as it has no listed impairments on either the 303(d) or the Monitoring Lists. The length of the Santa Margarita River is 1.8 miles within Riverside County.

Murrieta Creek and the Upper Santa Margarita River are listed on the 2002 303(d) List of Water Quality Limited Segments as impaired for Phosphorus. The length of the Santa Margarita River is 1.75 miles within Riverside County. Murrieta Creek is also on the 2002 Monitoring List for iron, manganese, and total dissolved solids, and the Santa Margarita River is listed for iron, manganese, sedimentation/siltation, sulfates, and total dissolved solids.

What is the importance of phosphorus exceedences? Phosphorus is an essential nutrient for plant and animal growth. There is no primary (human health) or secondary (aesthetic) maximum contaminant level (MCL) established for phosphorus, nor is it listed on EPA's Unregulated Contaminant Monitoring Rule or California Toxics Rule lists. EPA's "Quality Criteria for Water, 1986", commonly referred to as the "Gold Book", recommends a standard of 0.1 mg/L total phosphorus for preventing plant nuisances in flowing waters that do not directly discharge to lakes and to control accelerated eutrophication. Neither Murrieta Creek nor the upper SMR within Riverside County have a problem with plant nuisances, and since, during dry weather, there is no flowing water except at the lowest part of the watershed, there is also no accelerated eutrophication. The lower part of the watershed is fed by springs and rising groundwater and is also not exhibiting any signs of accelerated eutrophication. As shown in Fact Sheet Comment No. 1 (pg. 2), phosphorus is being assimilated by Murrieta Creek and the SMR.

What is the importance of the "Monitoring List" parameter exceedences? There are no primary drinking water MCLs for any of these parameters, so there is not a human health issue. None of these parameters are on either the EPA's Unregulated Contaminant Monitoring Rule or California Toxics Rule lists. Iron, manganese, sulfate, and total dissolved solids have a secondary (aesthetic) drinking water MCL. In addition to industrial use, iron, sulfate, and TDS can be contributed by soils, and the soils in the watershed are highly erosive.

According to the Water Body Fact Sheets for Murrieta Creek³ and the Santa Margarita River⁴, the following rationale was given for placing parameters on the Monitoring List:

³ 2002 CWA Section 303(d) List of Water Quality Limited Segments, Volume III: Regions 5 – 9, Water Bodies Proposed for the Monitoring List in Region 9, pg. Region 9 Monitoring List-6.

Water Body	Pollutant/Stressor	Rationale
Murrieta Creek	Iron	Quarterly sampling by Camp Pendleton from 1997 to 2000 and one-time sampling by RWQCB staff in 1998, indicated possible exceedance of the Basin Plan Objective). Additional monitoring is required to confirm this possibility.
	Manganese	
	Total Dissolved Solids	
Santa Margarita River (entire and tributaries)	Sedimentation/Siltation	RWQCB staff believes that a significant water quality problem exists because of prior experience with, and personal observations in, the watershed/water body, but no data was readily available to support a Section 303(d) listing.
Santa Margarita River (upper)	Iron	Quarterly sampling by Camp Pendleton from 1997 to 2000 indicated possible exceedance of the Basin Plan Objective or the California Code of Regulations Secondary MCL. Additional monitoring is necessary to confirm this possibility. After reviewing available information from the RWQCB, SWRCB staff concludes that the water body should be placed on the Monitoring Priority List because the data are inadequate to determine if applicable water quality standards are exceeded. This conclusion is based on the staff findings that: 1. The data is considered to be of inadequate quality. 2. The data exhibited insufficient spatial and temporal coverage. 3. Non-standard methods were used. An inadequate amount of the water quality measurements exceeded the water quality standard. The staff confidence that standards were exceeded is low.
	Manganese	
	Sulfate	
	Total Dissolved Solids	

4) Section VI.D. Page 13. D. Impacts to Human Health (Finding No. 7):

...Although the Upper Santa Margarita Watershed is inland, the watershed drains to the Pacific Ocean, and pollutants generated in the permitted area may impact coastal waters. For example, the Santa Margarita River system provides the main source of beach sand for the beaches of northern San Diego County (Shapiro, 1991). Also, residents in the permitted area who recreate at Southern California beaches benefit from clean water.

⁴ 2002 CWA Section 303(d) List of Water Quality Limited Segments, Volume III: Regions 5-9, Water Bodies Proposed for the Monitoring List in Region 9, pgs. Region 9 Monitoring List-11-13.

Comment to Section VI.D, Page 13, D. Impacts to Human Health (Finding No. 7):

The Permittees concur that this watershed is subject to extreme erosion, and that the channel beds are highly unstable. The Permittees enter the following excerpt from State of California Department of Public Works Division of Water Resources, Bulletin No. 57 – Santa Margarita River Investigation, June, 1956, Pages 50:

"Major floods have caused destruction and havoc in the watershed of the Santa Margarita River since the days of earliest Development."

In addition to extreme flood conditions, the region is subject to past and on-going changes in geology and is highly susceptible to erosion. In the recent past Temecula and Murrieta Creeks drained to Lake Elsinore and the Santa Ana River. The diversion of Temecula and Murrieta Creek to the Santa Margarita River occurred since the last ice age (as early as 11,000 years ago). The general sedimentation occurring in the Santa Margarita Region is primarily a response to this relatively recent geologic event:

"In early Pleistocene time, drainage was southwesterly across the Perris block and Santa Margarita region. During middle Pleistocene the Pasadenan orogeny occurred, accompanied by uplift and erosion. The San Jacinto, Santa Ana, and Palomar Mountains were uplifted and the Elsinore trough was downfaulted. The Santa Ana River, located northwest of the watershed, developed a subsequent tributary down the Elsinore trough and captured Temecula Creek.

The Upper Pleistocene epoch was characterized by the deposition of the Pauba formation, faulting, and by headward erosion by the Santa Margarita River resulting in the eventual capture of Murrieta and Temecula Creeks and the change of drainage direction to the present southwesterly course through Temecula Canyon. Larsen suggests that the San Luis Rey River similarly may capture in the early geologic future the drainage of Temecula Creek. During Upper Pleistocene time downfaulting of the Elsinore trough continued and Murrieta graben in its present configuration was formed. The Dripping Springs conglomerates were also deposited during this time. In the late Pleistocene the Nigger Canyon volcanics were emplaced. Deposition of alluvial sediments and movement along older faults has continued to the present." (State of California Department of Public Works Division of Water Resources, Bulletin No. 57 – Santa Margarita River Investigation, June, 1956, Pages B-41 and B-42).

The region is well documented to being susceptible to flood, erosion and changing geology. These natural impacts are the main contributors to sediment problems downstream.

5) Section VI.E, Page 14, E. Impacts from Urbanization (Finding No. 10)

Both causes are directly related to development in urban and urbanizing areas:

1. Increased volume and velocity of surface runoff. There are three types of human-made impervious covers that increase the volume and velocity of runoff: (i) rooftop, (ii) transportation imperviousness, and (iii) non-porous (impervious) surfaces. As these impervious surfaces increase, infiltration will decrease, forcing more water to run off the surface, picking up speed and pollutants.

Comment to Section VI.E. Page 14. E. Impacts from Urbanization (Finding No. 10)

Increases in volume and discharge of runoff due to urbanization are substantial only in smaller storm events. During larger storm events, soil saturation increases, ultimately to the point of full saturation. The USGS has indicated that under typical conditions, the incremental discharge impacts of increased impervious area are reduced to negligible by a 50-year return period due to soil saturation. This study was completed in the San Jacinto Watershed, which is within Riverside County and hydrologically similar to the Santa Margarita. (U.S. Geological Survey, Digital Simulation of the Effects of Urbanization on Runoff in the Upper Santa Ana Valley, California)

6) Section VI.E. Page 15. E. Impacts from Urbanization (Finding No. 10)

Increased volume and velocity of runoff adversely impacts receiving waters and their beneficial uses in many ways. According to the TAC report (SWRCB, 1994), increases in population density and imperviousness result in changes to stream hydrology including:

Flooding caused by the increased volume and velocity of runoff from urbanization in the Upper Santa Margarita Watershed demonstrates the effects described above. Disastrous floods have occurred more frequently in recent years. In the last century, major floods have occurred in 1938, 1969, 1980, 1993, 1995 and 1998 (USACE, 2000). The last four were declared "Presidential Disasters". In the 1993 event, the Cities of Murrieta and Temecula sustained \$12 million dollars in damage, and Camp Pendalton sustained \$88 million in damage (USACE, 2000). Future flooding is expected to occur more frequently due to continued development within the watershed, and flood damages are expected to continue accruing at an estimated annual rate of \$1,780,300 (U.S. Army Corps of Engineers, 2000).

Comment to Section VI.E. Page 15. E. Impacts from Urbanization (Finding No. 10)

Please see the comment 4 above for the discussion about the historical susceptibility of this watershed to extreme flooding, erosion and geologic faulting. The statements above misrepresent several facts related to this watershed. First, the construction of Skinner and Vail Lakes has removed over half of the drainage area tributary to Murrieta Creek. The net effect has been a reduction of 20-40% in peak flows and volumes from the natural condition for a given rainfall depth. It is estimated that the ultimate build out condition within this watershed will not result in peak flows or volumes exceeding the pre-dam existing condition. Further, this area has been historically subject to flooding. In the late 1800's a rail line through the Gorge was abandoned after 20 miles of track were washed out twice within 8 years. The rail line was only 9 years old.

Further the population of the Santa Margarita Watershed stayed relatively constant (less than 2000 people) until the 1980s. The floods of 1938, 1969 and 1980 occurred prior to the rapid urbanization of this watershed. Finally, the significant flood damage that led to the Presidential Disaster declarations is not due to the impacts of increased volume and velocity, but due to the encroachment of Old Town Temecula, and several individual homes, upon the Murrieta and Temecula Creek floodplains. Old Town Temecula significantly encroached upon, and constrained, the Murrieta Creek floodplain. This has led to significant flooding of, and damage to, this area in even moderate events. None of the controls proposed within the tentative Order

could have prevented, or reduced, the peak, volume, or damage that occurred during those floods. Nor will the controls proposed in the tentative Order have any substantial impact on future floods within this watershed.

7) Section VIII.C. Page 27, 2. Discussion of RWL Requirements:

The iterative BMP process requires the implementation of increasingly stringent BMPs until receiving water standards are achieved. This is necessary because implementation of BMPs alone cannot ensure attainment of receiving water quality objectives. For example, a BMP that is effective in one situation may not be applicable in another. An iterative process of BMP development, implementation, and assessment is needed to promote consistent compliance with receiving water quality objectives. If assessment of a given BMP confirms that the BMP is ineffective, the iterative process should be restarted, with redevelopment of a new BMP that is anticipated to result in compliance with receiving water quality objectives.

Comment to Section VIII.C. Page 27, 2. Discussion of RWL Requirements:

If a BMP is not working, increasingly stringent BMPs may not be the only answer. A solution may be as simple as changing the BMP being used with a similarly-stringent (e.g., based on new technology), but more effective, one.

8) Section VIII.C. Page 27, 2. Discussion of RWL Requirements:

On October 14, 1999, the SWRCB issued a legal opinion on the federal appellate decision and provided advice to the RWQCBs on how to proceed in the future (SWRCB, 1999b). In the memorandum, the SWRCB concludes that the recent Ninth Circuit opinion upholds the discretion of the EPA and the State to (continue to) issue permits to MS4s that require compliance with water quality standards through iterative BMPs. Moreover, the memorandum states that "[...] because most MS4 discharges enter impaired water bodies, there is a real need for permits to include stringent requirements to protect those water bodies. As total maximum daily loads (TMDLs) are developed, it is likely that MS4s will have to participate in pollutant load reductions, and the MS4 permits are the most effective vehicles for those reductions." In summary, the SWRCB concludes that the RWQCBs should continue to include the RWL language established in SWRCB Order WQ 99-05 in all future permits.

Comment to Section VIII.C. Page 27, 2. Discussion of RWL Requirements:

"As ... TMDLs ... are developed, it is likely that MS4s will have to participate in pollutant load reductions, and the MS4 permits are the most effective vehicles for those reductions." Once a TMDL is established for a waterbody, the MS4 permit may implement the load allocation assigned to the urban land use, but the MS4 permit is not intended, nor does the quoted legal opinion imply, that the MS4 permits were to take the place of the TMDL study for all land uses identified in a given watershed.

9) Section VIII.D. page 28, 1. Specific Legal Authority for Legal Authority Requirements:

Federal NPDES regulation 40 CFR 122.26(d)(1)(ii) requires from the Permittee "A description of existing legal authority to control discharges to the municipal separate storm sewer system."

Comment to Section VIII.D. Page 28. 1. Specific Legal Authority for Legal Authority Requirements:

40CFR122.26(d)(1)(ii) is a requirement that a description of adequate legal authority be submitted with Part 1 of a first-time application. The Permittees have complied with this requirement.

10) Section VIII.G. Page 43. 2. Discussion of Construction Requirements:

The EPA requires that all construction sites, regardless of size, must be addressed (and therefore inventoried), stating "All construction sites, regardless of size, must be addressed by the municipality. To begin to identify these sites, the applicant should obtain lists of construction site operators that are covered by general or individual stormwater NPDES permits from the NPDES permit authority. However, construction sites not covered by a stormwater discharge permit also need to be addressed by the municipality. The best way to identify these construction sites and implement an effective BMP program to reduce pollutants in their runoff is through the site planning process" (EPA, 1992a).

Comment on Section VIII G. Page 43.2.

The Permittees would note that the EPA guidance goes on to discuss that construction site BMP technologies and practices "rely predominantly on erosion and sediment controls and other measures applicable to construction sites (e.g., control of solid wastes, and prohibitions on discharging concrete truck washing runoff into the storm drain)". It is clear that the intention of this provision was to regulate sites with land disturbing activities. The Permittees would note that the current definition of construction project includes any project requiring a grading or building permit. This would include water heater installations, patio covers, and other projects not contemplated within these regulations. The Permittees continue to recommend that the definition of construction project be revised consistent with the definition proposed as part of our Construction Database white paper submitted on January 28.

11) Section VIII.J. Page 56. 1. Specific Legal Authority for Illicit Discharge Detection and Elimination

Federal NPDES regulations 40 CFR 122.26(d)(2)(iv)(B)(4) provides that the permittee include in its proposed management program "a description of a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers."

Comment to Section VIII.J. Page 56. 1. Specific Legal Authority for Illicit Discharge Detection and Elimination:

The correct reference is 40CFR122.26(d)(2)(iv)(B)(5).

12) Section VIII.J. Page 59. 3. Comments on Existing and Proposed Illicit Discharge Detection and Elimination Programs:

Section 3.2 of the ROWD states that the Permittees have programs in place to identify, eliminate, and respond to illicit connections and discharges. However, these programs are not described. According to the 2001-2002 Annual Progress Report, the District manages a toll-free reporting hotline, which satisfies **Requirement J.8** of the tentative Order (Permittees, 2002a). The reports do not mention hotlines for the Cities of Murrieta and Temecula. Public reporting hotlines will need to be developed, if they do not already exist, in order for the Cities to satisfy this requirement.

Comment to Section VIII.J. Page 59. 3. Comments on Existing and Proposed Illicit Discharge Detection and Elimination Programs:

The paragraph implies that separate hotlines will need to be developed for each city to comply with Requirement J.8. on page 28 of the draft Permit allows a shared hotline. The Fact Sheet language needs to be made consistent with the permit text.

13) Section VIII.K. Page 60. 2. Comments Existing and Proposed Watershed Programs:

The Permittees already collaborate with each other through monthly meetings. However, these meetings, as well as many aspects of the existing DAMP, are countywide. In order to address watershed-specific issues, the Permittees should meet separately to focus on the Upper Santa Margarita Watershed. The Permittees also already participate in San Diego County's current effort to develop a Santa Margarita Watershed Management Plan, the Southern California Stormwater Monitoring Coalition, and the Santa Margarita River Executive Management Team. At this time, this level of participation is appropriate to meet the objectives of Requirement K.3. of the tentative Order.

Comment to Section VIII.K. Page 60. 2. Comments Existing and Proposed Watershed Programs:

The Permittees in the Santa Ana and Santa Margarita Regions of Riverside County have been meeting jointly for monthly meetings since the inception of the urban runoff management programs in the early 1990s. This has been, and continues to be appropriate as the water quality management issues in both watersheds are similar. To the extent possible, the compliance programs implemented in these areas have been and will, to the extent possible, continue to be implemented consistently throughout both regions. Most importantly, as has been noted in our comments regarding the Tentative Order, three of the four Permittees in the Santa Margarita Region are also Permittees in the Santa Ana Region. The representatives from the City of Temecula have not been adverse to hearing about matters related to the Santa Ana Region nor have the Permittees outside of the Santa Margarita Region been adverse to hearing about matters related to that region.

14) Section IX.A. Page 61. 1. Specific Legal Authority for Receiving Waters Monitoring Requirements:

Federal NPDES regulations at 40 CFR 122.26(d)(2)(iii) require municipal permittees to conduct a comprehensive monitoring program to collect representative data for the term of the permit.

Specifically, the federal NPDES regulations require the following information to characterize stormwater discharges:

- 40 CFR 122.26(d)(2)(iii)(A): Quantitative data from between five and ten outfalls designated by the director.
- 40 CFR 122.26(d)(2)(iii)(B): Estimates of the annual pollutant loads from all municipal outfalls and the event mean concentration of the cumulative discharges to Waters of the U.S. from municipal outfalls during a storm event for BOD₅, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modeling, data analysis, and calculation methods.
- 40 CFR 122.26(d)(2)(iii)(C): A proposed schedule to provide estimates of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample.
- 40 CFR 122.26(d)(2)(iii)(D): A proposed monitoring program for representative data collection for the term of the permit that describes the location of outfalls, field screening points, or instream stations, why the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment.
- 40 CFR 122.26(d)(2)(iii)(A)(4): The Director may require additional quantitative data necessary to insure representativeness and to determine permit conditions.

Comment to Section IX.A. Page 61. 1. Specific Legal Authority for Receiving Waters Monitoring Requirements:

40CFR122.26(d)(2) and subsections contain the requirements for what is to be included in Part 2 of a first-time MS4 application. The SWRCB and SDRWQCB supported application under an "Early" permit process that was prompted by USEPA Region IX, in recognition that the monitoring requirements in 40CFR122 did not make much sense for ephemeral portions of watersheds. As the Permittees applied for and were issued an "Early" permit, the Part 1 and Part 2 permit application process was superseded.

15) Section IX.A. Page 64. 2. Discussion of Monitoring Program Requirements:

Federal NPDES regulations at 40 CFR 122.21(g)(7)(ii) require the sampling protocols specified in **section II of the Monitoring and Reporting Program**. These protocols are necessary to ensure consistent sampling, adequate representation of storm events, and accurate, comparable data.

Comment to Section IX.A. Page 64. 2. Discussion of Monitoring Program Requirements:

40 CFR 122.21(g)(7)(ii) refers to application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers.

16) Section IX.A. Page 67. Monitoring Program Costs:

The estimated cost of the tentative receiving waters monitoring requirements are reasonable, as compared to other monitoring programs that have been designed and implemented to meet the same objectives as those listed in the Monitoring and Reporting Program.

Comment to Section IX.A. Page 67. Monitoring Program Costs:

The Permittees prepared a cost assessment of the draft Monitoring and Reporting Program, which is included as a separate attachment. The calculated cost burden of the draft Monitoring and Reporting Program, based on actual laboratory analysis and staff labor costs, is more than four times what was presented as the average of Orange and San Diego County's per capita costs.

17) Section IX.A. Page 68. Table 6. footnotes 4 and 6:

⁴Includes cost of dry weather field screening but not coastal outfall monitoring

⁶Does not include cost of dry weather field screening or coastal outfall monitoring

Comment to Section IX.A. Page 68. Table 6. footnotes 4 and 6:

Basis for per capita costs are not equivalent, and an average per capita cost based on these numbers is inappropriate.

FINDINGS COMMENTS:

1) Finding No. 7:

Pollutants in urban runoff can threaten human health. Human illnesses have been clearly linked to recreating near storm drains flowing to coastal waters. Also, urban runoff pollutants in receiving waters can bioaccumulate in the tissues of invertebrates and fish, which may be eventually consumed by humans.

Comment to Finding No. 7:

This statement is irrelevant as the coast is 30 miles distant from the nearest point of the Permittee's MS4. Statement should be removed as follow:

Pollutants in urban runoff can threaten human health. Also, urban runoff pollutants in receiving waters can bioaccumulate in the tissues of invertebrates and fish, which may be eventually consumed by humans.

2) Finding No. 8:

Development and urbanization especially threaten environmentally sensitive areas (ESAs), such as water bodies designated as supporting a RARE beneficial use (supporting rare, threatened or endangered species) and CWA 303(d) impaired water bodies. Such areas have a much lower capacity to withstand pollutant shocks than might be acceptable in the general circumstance. In essence, development that is ordinarily insignificant in its impact on the environment may become significant in a particular sensitive environment. Therefore, additional control to reduce pollutants from new and existing development may be necessary for areas adjacent to or discharging directly to an environmentally sensitive area.

Comment to Finding No. 8:

Development does occur that does not threaten ESAs. Statement should be revised as follow:

Development and urbanization may threaten environmentally sensitive areas (ESAs), such as water bodies designated as supporting a RARE beneficial use (supporting rare, threatened or endangered species) and CWA 303(d) impaired water bodies. Such areas have a much lower capacity to withstand pollutant shocks than might be acceptable in the general circumstance. In essence, development that is ordinarily insignificant in its impact on the environment may become significant in an ESA. Therefore, additional control to reduce pollutants from new and existing development may be necessary for areas adjacent to or discharging directly to an ESA.

3) Finding No. 10:

Peak stormwater discharges rates, velocities and durations must be controlled to prevent downstream erosion and protect stream habitat. When natural vegetated pervious ground cover is converted to impervious surfaces such as paved highways, streets, rooftops, and parking lots, the natural absorption and infiltration abilities of the land are lost. Therefore, runoff leaving a developed urban area is significantly greater in volume, velocity, peak flow rate, and pollutant

load than predevelopment runoff from the same area. The increased volume, velocity, rate, and duration of runoff greatly accelerate the erosion of downstream natural channels.

Comment to Finding No. 10:

The potential impacts of urban development are variable depending on site specific conditions). Statement should be revised as follow:

Peak stormwater discharges rates, velocities and durations may need to be controlled to prevent downstream erosion and protect stream habitat where receiving waters have not been stabilized. When natural vegetated pervious ground cover is converted to impervious surfaces such as paved highways, streets, rooftops, and parking lots, the natural absorption and infiltration abilities of the land may be lost. Therefore, runoff leaving a developed urban area may be greater in volume, velocity, peak flow rate, and pollutant load than pre-development runoff from the same area. The increased volume, velocity, rate, and duration of runoff may accelerate the erosion of downstream natural channels.

4) Finding No. 12:

The MEP standard is an ever-evolving, flexible, and advancing concept, which considers technical and economic feasibility. As knowledge about controlling urban runoff continues to evolve, so does that which constitutes MEP. Reducing the discharge of stormwater pollutants to the MEP requires Permittees to conduct and document evaluation and assessment of each program component and revise activities, control measures, best management practices (BMPs), and measurable goals, as necessary to meet MEP. Because MEP is a dynamic performance standard, it is necessary to describe in greater detail, measures that are essential for compliance.

Comment to Finding No. 12:

It is not clear why the assertion that MEP is a dynamic performance standard necessitates prescribing compliance measures in greater detail. By doing so, the Regional Board is removing the flexibility that MEP was intended to allow. Further, it precludes the opportunity envisioned in the federal regulations for the Permittees to evolve their urban runoff management program based on local conditions, need and results of existing program.

5) Finding No. 16:

Urban runoff treatment and/or mitigation must occur prior to the discharge of urban runoff into a receiving water. Federal regulations at 40 CFR 131.10(a) state that in no case shall a state adopt waste transport or waste assimilation as a designated use for any waters of the U.S. Authorizing the construction of an urban runoff treatment facility within a water body, or using the water body itself as a treatment system or for conveyance to a treatment system, would be tantamount to accepting waste assimilation as an appropriate use for that water body. Furthermore, the construction, operation, and maintenance of a pollution control facility in a water body can negatively impact the physical, chemical, and biological integrity, as well as the beneficial uses, of the water body. This is consistent with EPA guidance to avoid locating structural controls in natural wetlands.

Comment to Finding No. 16:

Please provide reference for EPA guidance identified in last paragraph.

6) Finding No. 23:

RGOs are significant sources of pollutants in urban runoff. RGOs are points of convergence for motor vehicles for automotive related services such as repair, refueling, tire inflation, and radiator fill-up and consequently produce significantly higher loadings of hydrocarbons and trace metals (including copper and zinc) than other urban areas. To meet MEP, source control and treatment control BMPs are needed at RGOs that meet the following criteria: (a) 5,000 square feet or more, or (b) a projected Average Daily Traffic (ADT) of 100 or more vehicles per day. These are appropriate thresholds since vehicular development size and volume of traffic are good indicators of potential impacts of urban runoff from RGOs on receiving waters.

Comment to Finding No. 23:

Chairman stated that this should be considered for elimination from Tentative Order at the February Hearing.

7) Finding No. 25:

Section 6217(g) of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) requires coastal states with approved coastal zone management programs to address non-point pollution impacting or threatening coastal water quality. CZARA addresses five sources of non-point pollution: agriculture, silviculture, urban, marinas, and hydromodification. This NPDES permit addresses the management measures required for the urban category, with the exception of septic systems. The adoption and implementation of this NPDES permit relieves the Permittee from developing a non-point source plan, for the urban category, under CZARA. The SDRWQCB addresses septic systems through the administration of other programs.

Comment to Finding No. 25:

Murrieta and Temecula are not within the CZARA coastal zone, therefore Finding No. 25 is not applicable to the Permittee. Finding No. 25 should be removed.

8) Finding No. 26:

Each Permittee is individually responsible for adoption and enforcement of ordinances and/or policies, implementation of identified control measures/BMPs needed to prevent or reduce pollutants in stormwater runoff, and for the allocation of funds for the capital, operation and maintenance, and enforcement expenditures necessary to implement and enforce such control measures/BMPs within its jurisdiction.

Comment to Finding No. 26:

There are many non-jurisdictional facilities and activities "within" the Permittee's jurisdictions - The Permittee's ordinances and/or policies only apply to those facilities and activities "under" their jurisdictions.

PERMIT TEXT COMMENTS

1) Definition of Terms and Use of Glossary:

To promote clarity of intent, please define terms used in the Tentative Order in a glossary, capitalize defined terms within the text and use them consistently. The Permittees request that terms used in the Tentative Order be defined consistent with established federal and state regulatory definitions without modification.

2) Definition of Receiving Waters

Receiving Waters – Surface bodies of water, which directly or indirectly receive discharges from urban runoff conveyance systems, including naturally occurring wetlands, streams (perennial, intermittent, and ephemeral (exhibiting bed, bank, and ordinary high water mark)), creeks, rivers, reservoirs, lakes, lagoons, estuaries, harbors, bays, and the Pacific Ocean. The Permittee shall determine the definition for wetlands and the limits thereof for the purposes of this definition, provided the Permittee definition is as protective as the federal definition utilized by the U.S. Army Corps of Engineers and the USEPA. Constructed wetlands are not considered wetlands under this definition, unless the wetlands were constructed as mitigation for habitat loss. Other constructed BMPs are not considered receiving waters under this definition, unless the BMP was originally constructed in receiving waters.

Comments on Definition of Receiving Waters

The Permittees recommend the following definition based on the Santa Ana Permit:

"Receiving Waters – The Waters of the U.S. that includes surface and ground waters."

3) Provision F.2.b.1.g (page 12):

Parking lots 5,000 square feet or more or with 15 or more parking spaces and potentially exposed to urban runoff. Parking lot is defined as a land area or facility for the temporary parking or storage of motor vehicles used personally, for business, or for commerce.

Comment to Provision F.2.b.1.g (page 12):

Because individual parking spaces vary significantly in size, depending on configuration and local codes, Provision F.2.b.1.g should state:

"Parking lots 5,000 square feet or more and potentially exposed to urban runoff."

4) Provision F. 2.b.1.i (page 12):

Retail Gasoline Outlets. This category includes RGOs that meet the following criteria: (a) 5,000 square feet or more or (b) a projected Average Daily Traffic (ADT) of 100 or more vehicles per day

Comment to Provision F. 2.b.1.i (page 12):

Chairman suggested this requirement should be carefully reviewed.

5) Provision F.2.b.2.a (page 12):

Control the post-development urban runoff discharge velocities, volumes, durations, and peak rates to maintain or reduce predevelopment downstream erosion, and to protect stream habitat;

Comment to Provision F.2.b.2.a (page 12):

There are areas in the Santa Margarita Region where, due to channel stabilization or other considerations, control of velocities, volumes, durations and peak rates is not needed for downstream erosion and habitat maintenance and protection. Also, as written, the Permittees could be held liable for habitat loss during extreme events like in 1993, where these types of controls will likely fail. Statement should be revised as follow:

Control the post-development urban runoff discharge velocities, volumes, durations, and peak rates based on the runoff peak rates or volumes calculated from the numeric sizing criteria provided in Provision F.2.b.3 below, as needed to maintain or reduce pre-development downstream erosion, and to protect stream habitat.

6) Provision F.2.b.3 (page 13):

- (3) Numeric Sizing Criteria – The SUSMP shall require treatment control BMPs to be implemented for all Priority Development Projects. All treatment control BMPs shall be located so as to infiltrate, filter, or treat the required runoff volume or flow prior to its discharge to any receiving water. Treatment control BMPs may be shared by multiple Priority Development Projects as long as construction of any shared treatment control BMPs is completed prior to the use of any development project from which the treatment control BMP will receive runoff, and prior to discharge to a receiving water.

In addition to meeting the BMP requirements listed in Requirement F.2.b.(2) above, all treatment control BMPs for a single Priority Development Project shall collectively be sized to comply with the following numeric sizing criteria:

- (a) Volume - Volume-based BMPs shall be designed to mitigate (infiltrate, filter, or treat) either:
- (i) The volume of runoff produced from a 24-hour 85th percentile storm event, as determined from the local historical rainfall record (0.6 inch approximate average for the Riverside County area)⁵; or

⁵ This volume is not a single volume to be applied to all of Riverside County. The size of the 85th percentile storm event is different for various parts of the County. The Permittees are encouraged to calculate the 85th percentile storm event for each of their jurisdictions using local rain data pertinent to their particular jurisdiction (inch standard is a rough average for the County and should only be used where appropriate rain data is not available). In addition, isopluvial maps may be used to extrapolate rainfall data to areas where insufficient data exists in order to determine the volume of the local 85th percentile storm event in such areas. Where the Permittees will use isopluvial maps to determine the 85th percentile storm event in areas lacking rain data, the Permittees shall describe their method for using isopluvial maps in their SUSMPs.

- (ii) The volume of runoff produced by the 85th percentile 24-hour rainfall event, determined as the maximized capture stormwater volume for the area, from the formula recommended in Urban Runoff Quality Management, WEF Manual of Practice No. 23/ASCE Manual of Practice No. 87, (1998); or
- (iii) The volume of annual runoff based on unit basin storage volume, to achieve 90% or more volume treatment by the method recommended in California Stormwater Best Management Practices Handbook New Development and Redevelopment (2003)); or
- (iv) The volume of runoff, as determined from the local historical rainfall record, that achieves approximately the same reduction in pollutant loads and flows as achieved by mitigation of the 85th percentile 24-hour runoff event;⁶

OR

- (b) Flow - Flow-based BMPs shall be designed to mitigate (infiltrate, filter, or treat) either:
 - (i) The maximum flow rate of runoff produced from a rainfall intensity of 0.2 inch of rainfall per hour, for each hour of a storm event; or
 - (ii) The maximum flow rate of runoff produced by the 85th percentile hourly rainfall intensity (for each hour of a storm event), as determined from the local historical rainfall record, multiplied by a factor of two; or
 - (iii) The maximum flow rate of runoff for each hour of a storm event, as determined from the local historical rainfall record, that achieves approximately the same reduction in pollutant loads and flows as achieved by mitigation of the 85th percentile hourly rainfall intensity multiplied by a factor of two.

Comments on Provision F.2.b.3 (page 13):

The Permittees request that Board staff meet with us to review, and clarify, the language used to describe the flow and volume based BMP numeric-sizing criteria established above. The terminology used, although consistent with precedential language by the State, is not consistent with the referenced documents. This is confusing. For example, Requirement F.2.b.3., volume based BMPs, 2. Directs the Permittees to determine the 85% 24 hour rainfall event, determined using equations described in the WEF Manual of Practice. However, the equations and methodology referenced in the WEF manual, are actually based on an analysis of maximized RUNOFF volume (not rainfall depth). The methodology requires an analysis of the entire rainfall record to determine the number of events that would generate runoff. The "knee of the curve"

⁶ Under this volume criteria, hourly rainfall data may be used to calculate the 85th percentile storm event, where each storm event is identified by its separation from other storm events by at least six hours of no rain. Where the Permittees may use hourly rainfall data to calculate the 85th percentile storm event, the Permittees shall describe their method for using hourly rainfall data to calculate the 85th percentile storm event in their SUSMPs.

calculations are based on the resulting runoff events. There is not a linear relationship between the 85% rainfall event and the 85% runoff event, based on the WEF methodology. For these reasons, the initial reference to the 85% rainfall event is in error and should actually be referencing the 85% runoff event. There are also other minor errors including improper definitions of terms (does "storm event" refer to rainfall or runoff analysis, for example?), and clarifications about implicit assumptions. For example, what defines an independent storm event? There are several assumptions that the Permittees could make, the results of which could reduce or increase the required treatment volume by a factor of 2 in some cases. The State Water Quality Control Board Phase II Permit should be reviewed for additional guidance.

7) **Provision F.2.b.3.a.iii (page 14):**

(see Comment 5 above for addition context).

The volume of annual runoff based on unit basin storage volume, to achieve 90% or more volume treatment by the method recommended in California Stormwater Best Management Practices *Handbook New Development and Redevelopment* (2003)); or

Comment to Provision F.2.b.3.a.iii (page 14):

In the California Stormwater Quality Association (CASQA) California Stormwater BMP Handbook, January 2003 (CASQA handbook) Section 5.5.1, the treatment runoff for volume-based BMPs uses eighty (80)% of the volume of annual runoff using local rainfall data. Please revise Section F.2.b.3.a.iii to reflect 80% volume treatment as referenced in the CASQA handbook. This change is consistent with the language contained in State Board WQO 2003-0005-DWQ Attachment 4.

8) **Provision F.2.b.9 (page 16):**

Downstream Erosion - The Permittees shall develop numeric criteria to ensure that discharges from Priority Development Projects maintain or reduce pre-development downstream erosion and protect stream habitat. At a minimum, numeric criteria shall be developed to control urban runoff discharge velocities, volumes, durations, and peak rates in order to maintain or reduce pre-development downstream erosion and protect stream habitat. Development of the numeric criteria with its supporting documentation shall be completed in 2008 and submitted with the Permittees' application for renewal of this Order. The Permittees shall be prepared to implement the numeric criteria upon renewal of this NPDES permit in April 2009.

The Fact Sheet support states (Section VIII.F, Page 38):

Development can cause increases in runoff amount and velocity causing down erosion problems. Simply maintaining the peak flow rate may not be adequate to prevent increased downstream erosion because of the increase in duration of erosive flows. According to several studies, this approach is an oversimplification of geomorphological processes (Brown, 2001). Simply controlling the post-development peak discharge rate causes the duration of erosive flows to increase, which may actually exacerbate channel erosion since bank are exposed to a longer duration of erosive events (Brown, 2001). Development of numeric criteria over the permit cycle is needed to establish a design storm type and level of discharge that is appropriate to protect

downstream habitat from increased erosion. Section II.A of Monitoring and Reporting Program No. R9-2004-001 requires the Permittees to conduct a study to help develop the numeric criteria.

The Ventura County Flood Control District and the Southern California Coastal Water Research Project are currently conducting studies to evaluate the erosive effects on urbanization to in part, to quantitatively predict downstream impacts due to development. The development of numeric criteria by the Permittees should build upon these efforts and not duplicate them. The intent of these requirements is to mitigate these potential increases and prevent downstream erosion problems like the severe bank erosion and channel degradation that has occurred in Murrieta Creek (U.S. Army Corps of Engineers, 2000).

Comment to Provision F.2.b.9 (page 16):

It should be noted that the Permittees are required by law to ensure that runoff from new development does not adversely impact downstream properties. The mandate has led to development of several methods of increased runoff control in California, focusing on both erosion control and peak flow mitigation. Riverside County has implemented controls on erosion and peak flow since 1996. The methodology requires the review of impacts from 12 different duration-frequency storm combinations including 1, 3, 6, and 24 hour storms with 2, 5 and 10 year return frequencies. In addition outlet structures must be constructed to reasonably mimic pre-development flow regimes and the developer must implement additional controls as necessary to ensure that downstream properties will not be impacted by erosion.

The 3 page Brown reference summarizes several methodologies for addressing increased runoff, and conclude that controlling peak flow is an oversimplification of geomorphological processes. Brown is a biologist for the Center for Watershed Protection, and was writing a short position piece for Water Resources Impact. It should be noted that none of the methodologies that Brown reference independently address erosion control and that all of the methods center on the review of a single frequency-duration combination.

The County's existing methodology has proven to be effective in addressing downstream erosion issues for not only downstream properties, but downstream habitat and stream systems.

9) **Provision G.3.a (page 18):**

3. Modify Construction and Grading Approval Process

Each Permittee shall develop and implement a process to ensure that BMPs to reduce the discharge of pollutants to the MEP are applicable to construction and grading permits and plans prior to their approval and issuance. Such BMPs shall include the following requirements or their equivalent:

- a) Require project proponent to develop and implement a plan to manage stormwater and non-stormwater discharges from the site at all times.

The Fact Sheet (Section VIII.G, Page 43) states:

An effective means for reducing pollutants discharges from construction and grading activities is specified under **Requirement G.3** for the Permittees to develop conditions of approval for grading and construction permits that require measures to minimize pollutant discharges. The EPA recommends approval processes which consider water quality impacts, stating that approval process requirements should "include phasing development to coincide with seasonal dry periods, minimizing areas that are cleared and graded to only the portion of the site that is necessary for construction, exposing areas for the briefest period possible, and stabilizing and reseeding disturbed areas rapidly after construction activity is completed (EPA, 1992a)". Other suggested construction and grading conditions of approval listed in this item are based on TAC recommendations (SWRCB, 1994).

During approval and issuance of grading and construction permits, each Permittee must review construction and grading plans to ensure that the conditions of approval are met. The EPA states that to determine if a construction site is in compliance with construction and grading ordinances and permits, the "MS4 operator should review the site plans submitted by the construction site operator before ground is broken" (EPA, 2000c). Furthermore, the EPA requires small municipalities to develop and implement for construction sites "Procedures for site plan review which incorporate consideration of potential water quality impacts" (EPA, 1999b).

Comments on Provision G.3.a. (page 18):

The language of Provision G.3.a is confusing to the Permittees. Several Permittees believe that this language requires them to review and approve SWPPPs, or a document that would effectively duplicate a SWPPP. The Permittees are concerned that this would lead to increased cost and confusion, not only for the developers, but for the Permittees.

The Permittees review 40CFR122.34(b)(4)(ii)(D), which states:

"A description of a program to implement and maintain structural and non-structural best management practices to reduce pollutants in stormwater runoff from construction sites to the municipal storm sewer system which shall include:

- 1) A description of procedures for site planning which incorporate consideration of potential water quality impacts;
- 2) A description of requirements for nonstructural and structural best management practices;
- 3)"

The Permittees recommend that the following alternative language for Provision G.3.a, which we believe is consistent with 40 CFR, the cited EPA guidance, and the intent of the Permit Provision be incorporated into the Permit:

- a) Review site plans prior to groundbreaking to ensure measures are taken to manage stormwater and non-stormwater discharges from the site at all times;

10) **Provision H.1.c.1 (page 22):**

Within 365 from the date of this Order, each Permittee shall implement or require the implementation of BMPs to reduce pollutants in urban runoff to the MEP from all municipal facilities and activities. The required BMPs shall be facility or activity specific as appropriate.

Comment to Provision H.1.c.1 (page 22):

Cities/Counties do not have authority over non-jurisdictional facilities within their jurisdictional areas. For example, all of the District and Caltrans facilities are located within one of the cities or the County area. Neither the cities or the County have jurisdiction over these facilities, nor do they need to as they are already covered under MS4 permits. Statement should be revised to the following:

Within 365 from the date of this Order, each Permittee shall implement or require the implementation of BMPs to reduce pollutants in urban runoff to the MEP from all of the Permittee's municipal facilities and activities. The required BMPs shall be facility or activity specific as appropriate.

11) **Provision H.1.d.2 (page 22):**

- (2) Each Permittee shall implement a schedule of maintenance activities for the MS4. The maintenance activities must, at a minimum, include:
- (a) Inspection of all catch basins and storm drain inlets at least once a year between May 1 and September 30. If accumulated waste is visible, the catch basin, or storm drain inlet, shall be cleaned out. Additional cleaning shall be conducted as necessary;
 - (b) Removal of anthropogenic litter from open channels at least once a year between May 1 and September 30, with additional removal as necessary;
 - (c) Record keeping of MS4 cleaning activities;
 - (d) Proper disposal of waste removed pursuant to applicable laws; and
 - (e) Measures to eliminate waste discharges during MS4 maintenance and cleaning activities.

Comment to Provision H.1.d.2 (page 22):

Non-jurisdictional MS4s exist within Permittee's jurisdictional boundaries - e.g. Caltrans has MS4 facilities within the jurisdictional boundaries of the cities of Murrita and Temecula and the County. Add to this school districts, utilities, special districts, etc., and it is apparent that there are a lot of MS4 facilities within the jurisdictional boundaries of the Permittees that the Permittees have no control over. The Permittees will need to rely on the Regional Board to regulate these dischargers. Statements should be revised as follow:

- (2) Each Permittee shall implement a schedule of maintenance activities for its MS4. The maintenance activities must, at a minimum, include:
- (a) Inspection of all of the Permittee's catch basins and storm drain inlets at least once a year between May 1 and September 30. If accumulated waste is visible, the catch basin, or storm drain inlet, shall be cleaned out. Additional cleaning shall be conducted as necessary;
 - (b) Removal of anthropogenic litter from the Permittee's open channels at least once a year between May 1 and September 30, with additional removal as necessary;
 - (c) Record keeping of the Permittee's MS4 cleaning activities;
 - (d) Proper disposal of waste removed from the Permittee's MS4 pursuant to applicable laws; and
 - (e) Measures to eliminate waste discharges during MS4 maintenance and cleaning activities.

12) Provision H.1.e (page 22):

The Permittees shall implement BMPs to reduce the contribution of pollutants associated with the application, storage, and disposal of pesticides, herbicides and fertilizers from municipal facilities and activities to MS4s. Such BMPs shall include, at a minimum: (1) educational activities, permits, certifications and other measures for municipal applicators and distributors; (2) integrated pest management measures that rely on non-chemical solutions; (3) the use of native vegetation; (4) schedules for irrigation and chemical application; and (5) the collection and proper disposal of unused pesticides, herbicides, and fertilizers.

Comment to Provision H.1.e (page 22):

Items (2) and (3) may not be applicable or practical for all situations. "Where feasible" should be added to these two items.

13) Provision H.2.d.3.c (page 25):

Assessment of BMP effectiveness, including a review of any available monitoring data conducted pursuant to the General Industrial Permit;

Comment to Provision H.2.d.3.c (page 25):

The monitoring data is collected and reviewed by the Regional Board as part of General Industrial Activities Stormwater Permit. If reports indicate problems, it is much more cost effective for RB Staff, who are already trained to analyze the monitoring data, to coordinate with Permittees to resolve potential problems. Statement should be revised as follow:

Assessment of BMP effectiveness;

14) **Provision J.7 (page 28):**

Sewage Spill Prevention and Response

Each Permittee shall take appropriate actions to prevent, respond to, contain and cleanup sewage spills (including private laterals and failing septic systems) into the MS4 and to prevent the contamination of surface water, ground water and soil to the MEP. Appropriate actions may include the following:

- Develop and implement a mechanism to be notified of all sewage spills from private laterals and failing septic systems into the MS4;
- Coordinate spill prevention, containment and response activities throughout all appropriate departments, programs and agencies to ensure maximum water quality protection at all times;
- Require adequately sized and properly maintained private property sewerage systems, such as at residential and commercial complexes;
- Require proper connections of private laterals to the public sewer main;
- Require adequately-sized, and properly maintained grease control devices at food establishments which otherwise could result in sewer line grease blockages;
- Conduct municipal activities such as street repair or tree plantings in a manner that minimizes sewer line damages or root blockages;
- Identify priority areas, produce maps and other information on systems obtained during development review;
- Educate the public on measures to prevent spills; and
- Ensure that private lines are inspected.

Comment to Section J.7 (page 28):

Because the permittees do not own, operate or maintain sanitary sewers, several of the appropriate actions listed in Section J.7 are not applicable. However, County Health and Hazmat responds to and informs the Permittees of sewage spills of any sort.

15) **Provision K.2.b (page 29):**

A description of any interagency agreement, or other efforts, with non-Permittee owners of the MS4 (such as Caltrans, Native American Tribes, and school districts) to control the contribution of pollutants from one portion of the shared MS4 to another portion of the shared MS4;

Comment to Provision K.2.b (page 29):

This should not be necessary as the Regional Board has authority to regulate these sources as Phase I & II MS4 permittees - why pass this responsibility off on the Permittees?

16) Definition of ESA

Attachment C – Definitions:

ESA (Environmentally Sensitive Area) – Areas "in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which would easily be disturbed or degraded by human activities and developments" (California Public Resources Code section 30107.5). ESAs subject to stormwater requirements include but are not limited to all CWA section 303(d) impaired water bodies, areas designated as Areas of Special Biological Significance by the SWRCB (Basin Plan); water bodies designated with the RARE beneficial use by the SWRCB (Basin Plan); areas designated as preserves or equivalent under the Western Riverside County Multi-Species Habitat Conservation Plan; and any other equivalent environmentally sensitive areas which the Permittees have identified.

Tentative Order No. R9-2004-001, Finding 8:

Development and urbanization especially threaten environmentally sensitive areas (ESAs), such as water bodies designated as supporting a RARE beneficial use (supporting rare, threatened or endangered species) and CWA 303(d) impaired water bodies. Such areas have a much lower capacity to withstand pollutant shocks than might be acceptable in the general circumstance. In essence, development that is ordinarily insignificant in its impact on the environment may become significant in a particular sensitive environment. Therefore, additional control to reduce pollutants from new and existing development may be necessary for areas adjacent to or discharging directly to an environmentally sensitive area.

Fact Sheet support for Finding No. 8 (page 16):

Development and urbanization especially threaten environmentally sensitive areas (ESAs), such as water bodies designated as supporting a RARE beneficial use (supporting rare, threatened or endangered species) and CWA 303(d) impaired water bodies. Such areas have a much lower capacity to withstand pollutant shocks than might be acceptable in the general circumstance. In essence, development that is ordinarily insignificant in its impact on the environment may become significant in a particular sensitive environment. Therefore, additional control to reduce pollutants from new and existing development may be necessary for areas adjacent to or discharging directly to an environmentally sensitive area. ESAs are defined in the tentative Order as "areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which would easily be disturbed or degraded by human activities and developments (California Public Resources Code section 30107.5). ESAs subject to urban runoff requirements include but are not limited to all CWA Section 303(d) impaired water bodies; areas designated as Areas of Special Biological Significance by the SWRCB (Basin Plan); water bodies designated with the RARE beneficial use by the SWRCB (Basin Plan); areas designated as preserves or equivalent under the Western Riverside County Multi-Species Habitat Conservation Plan; and any other equivalent environmentally sensitive areas which the Permittees have identified.

Comment to Definition of ESA:

The Permittees Recommend that the definition of ESA be revised per the Public Resources Code, section 30107.5, without modification. The Permittees are particularly concerned with the reference to the Western Riverside County Multi-Species Habitat Conservation Plan (MSHCP) in the Permit Text, Glossary and Fact Sheet. The MSHCP identifies broad areas from which preserves and Species Movement Corridors should be constructed. For each quarter section (approximately ¼ square mile) identified in the plan, a specified percentage of that area must be conserved to meet plan objectives. Not all lands identified in the MSHCP planning documents will therefore be preserved, or were intended to be preserved. This could be confusing to constituents, Permittees and Regulators attempting to interpret the Tentative Order.

17) Provision G.5

5. BMP Implementation

- a) Each Permittee shall designate a set of minimum BMPs that ensure the following at all construction sites:
 - (1) Erosion prevention;
 - (2) Seasonal restrictions on grading;
 - (3) Slope stabilization;
 - (4) Phased grading;
 - (5) Revegetation as early as feasible;
 - (6) Preservation of natural hydrologic features;
 - (7) Preservation of riparian buffers and corridors;
 - (8) Maintenance of all source control and treatment control BMPs; and
 - (9) Retention and proper management of sediment and other construction pollutants on site.
- b) Each Permittee shall implement, or require the implementation of, the designated minimum BMPs at each construction site within its jurisdiction year round. If a particular minimum BMP is infeasible at any specific site, each Permittee shall implement, or require the implementation of, other equivalent BMPs. Each Permittee shall also implement or require any additional site specific BMPs as necessary to comply with this Order, including BMPs which are more stringent than those required under the General Construction Permit.

- c) Each Permittee shall implement, or require the implementation of, BMPs year round; however, BMP implementation requirements can vary based on wet and dry seasons.
- d) Each Permittee shall implement, or require implementation of, additional sediment controls for construction sites tributary to CWA section 303(d) water bodies impaired for sediment as necessary to comply with this Order. Each Permittee shall implement, or require implementation of, additional controls for construction sites within or adjacent to or discharging directly to receiving waters within ESAs as necessary to comply with this Order.

Comments on G.5.a

Construction Sites are defined in the permit as:

Any project requiring a local grading or building permit, including project covered under the General Construction Permit.

The Permittees continue to recommend that the definition of Construction Sites be revised to reflect the definition included in our January 28 Comment Letter as part of the Construction Databases white paper. Without that change, this Provision would be applicable to water heater installation, patio cover installations, etc. This is clearly not the intent.

Comments on G.5.a.2

The Permittees recommend striking provision G.5.a.2. Provision G.5.a.4 requires Phased Grading, and Provision G.5.c provides the Permittees with the flexibility to vary BMP implementation based on time of year. This effectively allows the Permittees to implement either more stringent, or less stringent phasing based on season. The Permittees believe that G.5.a.2 is effectively made redundant by the other two provisions. Further, it is not clear to the Permittees what alternative BMPs could be proposed that would be equivalent to seasonal restrictions on grading, yet are not already included as a mandatory requirement under this Provision.

Comments on Provision G.5.a.6 and G.5.a.7

Preservation of natural hydrologic features, riparian buffers and riparian corridors is not feasible under every situation. Further, the Permittees would note that the recent adoption of the Multi Species Habitat Conservation Plan provides extensive coverage for these types of features within the Santa Margarita Watershed. The Permittees have submitted copies of the documents describing the protections to Regional Board staff in prior meetings. The Permittees recommend that the words "if feasible" be appended to these provisions.

MONITORING AND REPORTING PROGRAM

The comments presented below pertain to what is contained in the Tentative Monitoring and Reporting Program R9-20004-001. However, the Permittee have developed an alternative monitoring program which takes into the hydrologic and water quality conditions of the Santa Margarita Region. The proposed alternative monitoring program, as well as a cost assessment of both programs, is provided in a separate attachment.

1) Section II.A, Page 3:

The Permittees shall monitor the first storm event of each monitoring year that produces sufficient flow to collect a composite sample, and a minimum of 2 additional storm events during each monitoring year at each mass loading station. A monitoring year is from October 1 through September 30.

Comment to Section II.A. Page 3:

"A monitoring year is from October 1 through September 30." Statistics have previously been reported by Fiscal Year (July 1 through June 30). As the Annual Report is due on October 31, the Permittees request that the reporting period end on June 30 to give enough time to prepare the report.

2) Section II.A., Page 3:

In the event that three storm events are not sampled during one monitoring year at any given station, the Permittees shall submit, with the subsequent Annual Report, a written explanation for a lack of sampling data, including streamflow data from the nearest USGS gauging station, and a proposal for compensatory sampling (EPA 833-B-92-001). A minimum of 15 storm events shall be sampled at each mass loading station during the permit term. Compensatory sampling shall be sufficient to meet the minimum number of samples.

Comment to Section II.A., Page 3:

The referenced document (EPA 833-B-92-001) provides guidance on modifying sampling protocol, but does not indicate that compensatory sampling is required if three sampleable storm events do not occur in a given reporting period.

3) Section II.A. Page 4:

a) Each bioassessment station shall:

- (1) Be located within the jurisdiction of a Permittee;
- (2) Meet the physical criteria of the California Department of Fish and Game's California Stream Bioassessment Procedure (CSBP)³;
- (3) To the extent feasible, be located within ½ mile upstream or downstream from a mass loading station; and

- (4) To the extent feasible, coincide with the location of a monitoring station previously used by the California Department of Fish and Game for the SDRWQCB's Ambient Bioassessment Program.

³California Stream Bioassessment Procedure (Protocol Brief for Biological and Physical/Habitat Assessment in Wadeable Streams), California Department of Fish and Game – Aquatic Bioassessment Laboratory, May 1999.

Comment to Section II.A. Page 4:

The bullet items listed do not indicate that the purpose of bioassessment is to determine the impact of urban runoff on biological integrity. A bullet item should be added to state that the bioassessment station should also receive regular discharge of urban runoff originating within the Permittee's jurisdiction.

4) Section II.A. Page 4, footnote 2:

- a) The Permittees shall analyze samples from two storm events (including the first storm of each year) and two dry weather events from each mass loading station for toxicity every year. At a minimum, the Permittees shall conduct 48-hour non-renewal/96-hour static renewal tests with an invertebrate, *Ceriodaphnia dubia* (water flea) and a vertebrate, *Pimephales promelas* (fathead minnow) for each station event². Alternative species that are sensitive to metals and pesticides

²A station event is one a sampling event at one station (i.e., each sample from each mass loading station shall be used to test for toxicity on both species).

Comment to Section II.A. Page 4, footnote 2:

The term "station event" is defined only with respect to water column toxicity testing, and "sampling event" is used elsewhere. For consistency, the words "sampling event" should be used, and the footnote removed.

5) Section II.A., Page 5:

- d) Results of the bioassessment monitoring shall be reported annually. The annual monitoring report shall include:
- (1) All physical, chemical and biological data collected in the assessment;
 - (2) Photographic documentation of assessment and reference stations;
 - (3) Documentation of quality assurance and control procedures;
 - (4) Analysis that includes calculation of the metrics used in both the CSBP and the San Diego IBI;

- (5) The report shall provide interpretation for comparisons of mean biological and habitat assessment metric values between assessment and reference stations;
- (6) Electronic data formatted to California Department of Fish and Game Aquatic Bioassessment Laboratory specifications for inclusion in the Statewide Access Bioassessment database; and
- (7) Copies of all QA/AC documents from laboratories.

Comment to Section II.A., Page 5:

This subsection should be relocated to II.B. (Monitoring Reporting Requirements) on page 13 to place all reporting provisions in the same location.

6) Section II.A. Page 7:

b) Toxicity Reduction Evaluations (TRE)

The purpose of a TRE is to investigate the cause of and to identify corrective actions to eliminate toxicity in receiving waters.

When a TIE identifies a pollutant(s) associated with urban runoff as a cause of toxicity, Permittees shall initiate a TRE immediately. The TRE shall include all reasonable steps to identify the source(s) of toxicity and propose appropriate BMPs to eliminate the causes of toxicity. Once the source of toxicity and appropriate BMPs are identified, the Permittees shall submit the TRE to the SDRWQCB for review. Within 30 days following the approval by the SDRWQCB, Permittees shall revise their SWMPs to incorporate the modified BMPs that will be implemented. At a minimum, a TRE shall include a discussion of the following items:

- (1) The potential sources of pollutant(s) causing toxicity;
- (2) A list of municipalities and other entities that may have jurisdiction over sources of pollutant(s) causing toxicity; and
- (3) Proposed actions that will be taken to reduce the pollutants causing toxicity and methods to measure the effectiveness of those actions.
- (4) The Permittees shall report on the development, implementation, and results for each TRE in the annual Monitoring Report, beginning the year following the identification of each pollutant or pollutant class causing toxicity.

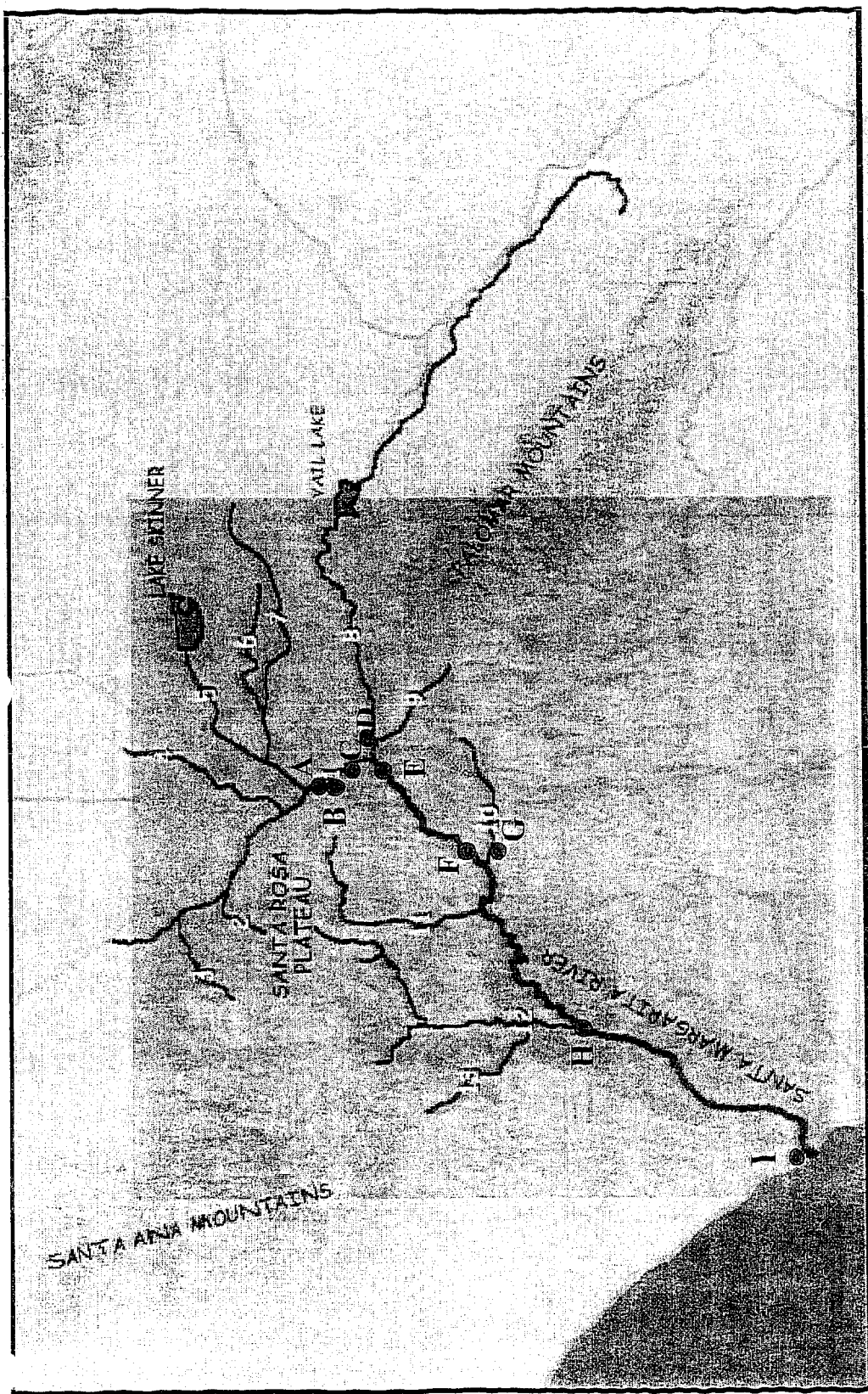
Comment to Section II.A. Page 7:

The TRE should be stated to focus on elimination of urban runoff sources of toxicity in receiving waters.

ATTACHMENT A

The map on the following page shows the locations of monitoring stations used to graph phosphorus concentrations in the Santa Margarita River watershed. The stations listed below are in the order of upstream to downstream. Total phosphorus concentrations of samples taken from these stations are depicted in two graphs following this page.

- A. MC-RCWD Live Stream – Rancho California Water District (RCWD) live stream release point on Murrieta Creek. RCWD releases potable water at this station. The data depicted is the total phosphorus concentration of the potable water released into Murrieta Creek.
- B. MC-River Meter – an RCWD station downstream of the live stream release point on Murrieta Creek. River Meter is approximately 5 miles upstream of the U.S.G.S. monitoring station.
- C. MC Sta. – the U.S.G.S. monitoring station along Murrieta Creek, upstream of the confluence with Temecula Creek into the Santa Margarita River.
- D. TC – Temecula Creek sampling station, upstream of the confluence with Murrieta Creek into the Santa Margarita River.
- E. SMR Sta. – Santa Margarita River sampling station, downstream of the confluence of the Murrieta and Temecula Creek.
- F. Willow Glen – Sampling station along the Santa Margarita River.
- G. Rainbow Creek – Rainbow Creek sampling station at Riverhouse, upstream of the confluence with the Santa Margarita River.
- H. DeLuz – Sampling station along the Santa Margarita River.
- I. Estuary – Sampling station along the Santa Margarita River.



Monitoring Stations

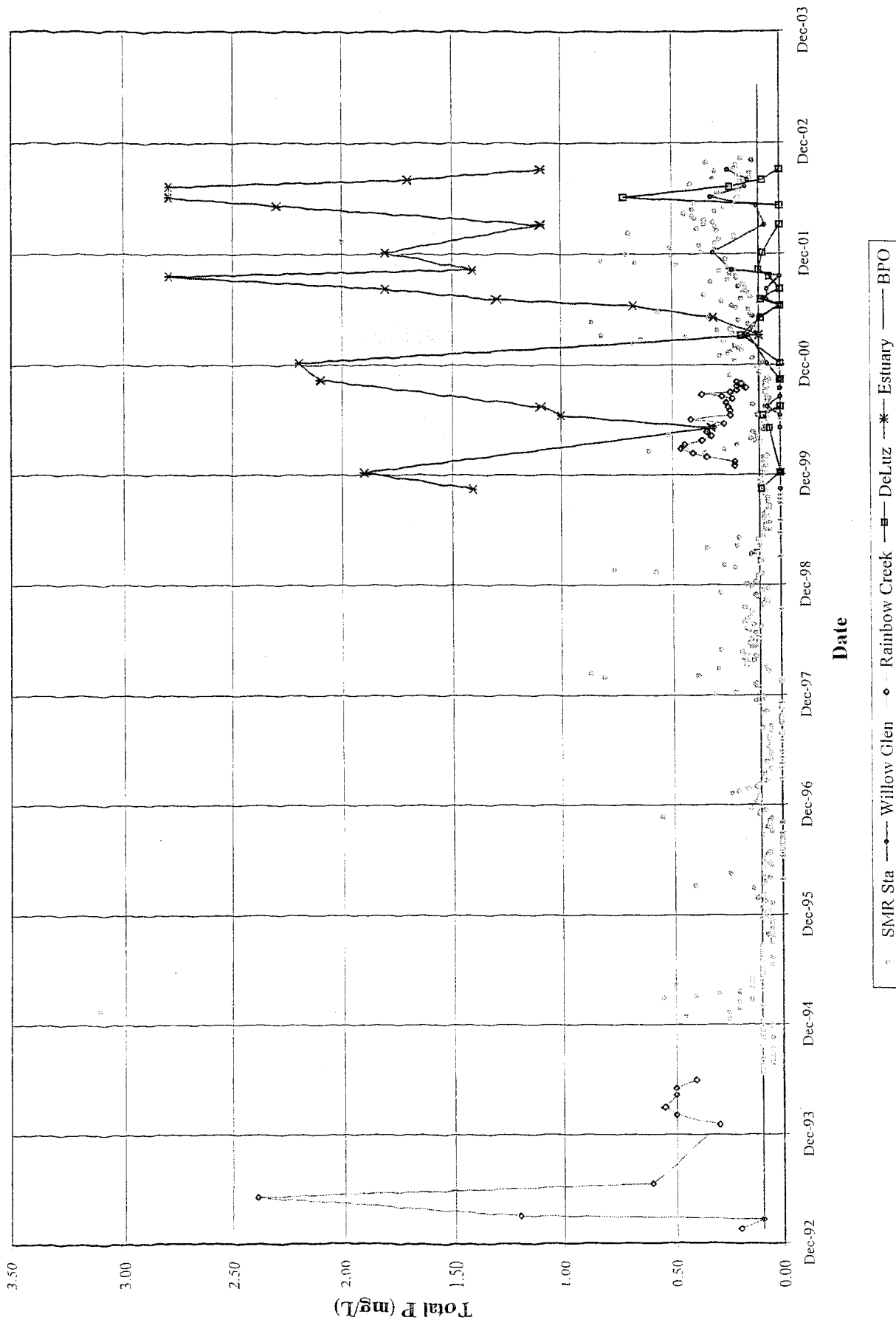
- A. MC-RCWC Live Stream
- B. MC-River Meter
- C. MC Sta.
- D. TC
- E. SMR Sta.
- F. Willow Glen
- G. Rainbow Creek
- H. DeLuz
- I. Estuary

Santa Margarita Tributaries

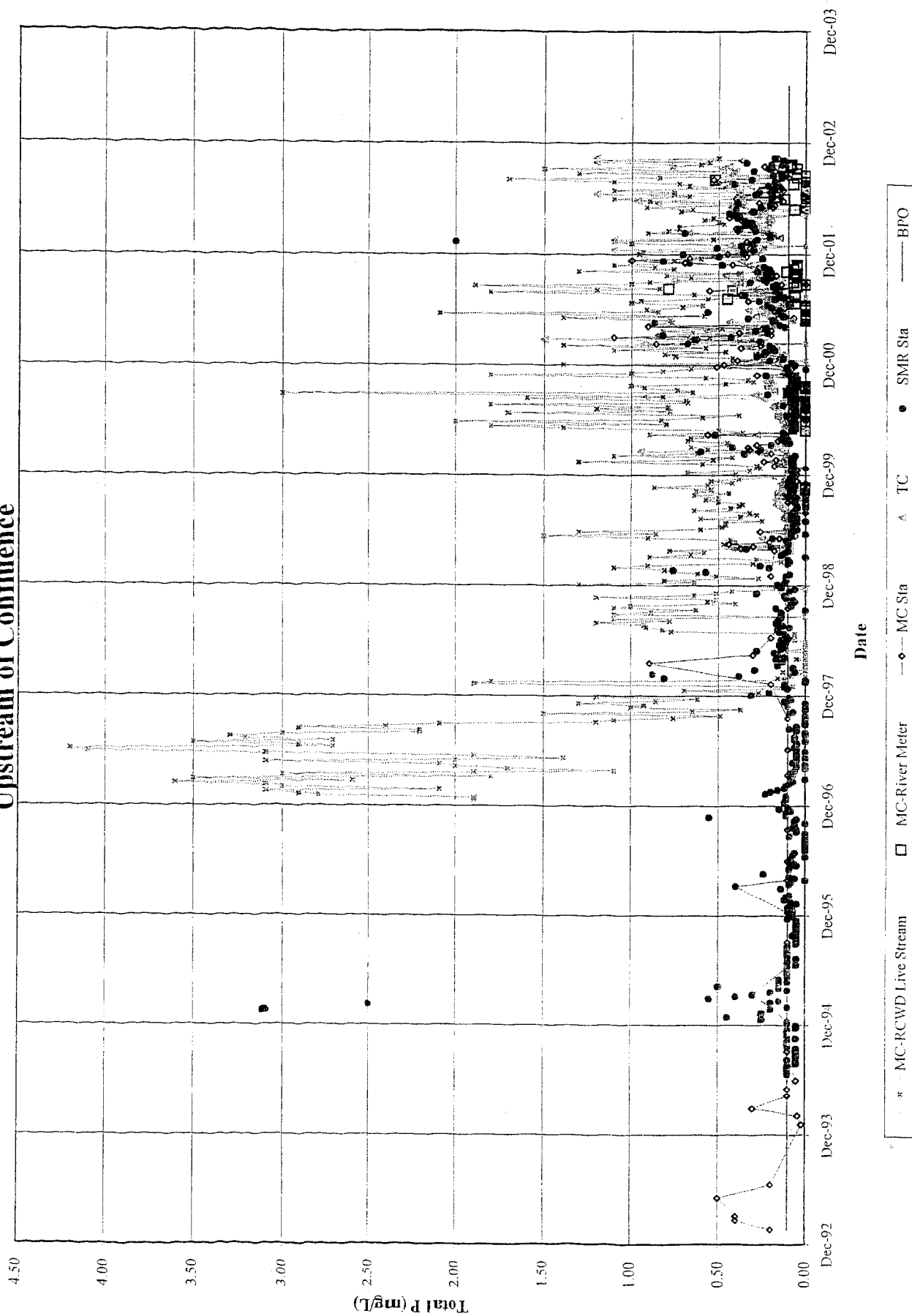
- 1. Murrieta Creek
- 2. Cole Creek
- 3. Slaughterhouse Creek
- 4. Warm Springs Creek
- 5. Tucalota Creek
- 6. Santa Gertrudis Creek
- 7. Long Valley Wash
- 8. Temecula Creek
- 9. Pechanga Creek
- 10. Rainbow Creek
- 11. Sandia Creek
- 12. De Luz Creek
- 13. Roblar Creek

The graph displays Total Phosphorus (mg/L) on the y-axis (0.00 to 3.50) against Date on the x-axis (Dec-92 to Dec-03). Four data series are plotted: Willow Glen (diamonds), Rainbow Creek (squares), Deluz (asterisks), and Estuary (crosses). Willow Glen shows a sharp peak in Dec-93. Rainbow Creek and Deluz show significant peaks in Dec-01. The Estuary shows a peak in Dec-99.

Date	Willow Glen (mg/L)	Rainbow Creek (mg/L)	Deluz (mg/L)	Estuary (mg/L)
Dec-92	0.15	0.05	0.05	0.05
Dec-93	0.45	0.05	0.05	0.05
Dec-94	0.15	0.05	0.05	0.05
Dec-95	0.15	0.05	0.05	0.05
Dec-96	0.15	0.05	0.05	0.05
Dec-97	0.15	0.05	0.05	0.05
Dec-98	0.15	0.05	0.05	0.05
Dec-99	0.15	0.05	0.05	0.15
Dec-00	0.15	0.05	0.05	0.05
Dec-01	0.15	0.15	0.15	0.05
Dec-02	0.15	0.05	0.05	0.05
Dec-03	0.15	0.05	0.05	0.05



Total Phosphorus: Santa Margarita River Upstream of Confluence



CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION
TENTATIVE ORDER NO. R9-2004-001
NPDES NO. CAS0108766
WASTE DISCHARGE REQUIREMENTS
FOR DISCHARGES OF URBAN RUNOFF FROM
THE MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s)
DRAINING THE COUNTY OF RIVERSIDE,
THE CITY OF MURRIETA, THE CITY OF TEMECULA AND THE
RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
WITHIN THE SANTA MARGARITA WATERSHED

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MONITORING AND REPORTING PROGRAM

FINDINGS

The California Regional Water Quality Control Board, San Diego Region (hereinafter SDRWQCB), finds that:

1. The Riverside County Flood Control and Water Conservation District (District), the County of Riverside and the Cities of Murrieta and Temecula (hereinafter called Permittees), own or operate municipal separate storm sewer systems (MS4s), through which urban runoff is discharged into waters of the United States within the Santa Margarita watershed area of Riverside County in the San Diego Region (hereinafter referred to as the Upper Santa Margarita Watershed).
2. The SDRWQCB has previously issued two MS4 permits for the Upper Santa Margarita Watershed. The first-round MS4 permit was issued on July 16, 1990, and the second-round MS4 permit was issued on May 30, 1998 (Order No. R9-98-02). On May 26, 1998, the United States Environmental Protection Agency (EPA), Region IX, objected to Order No. 98-02 due to concerns regarding the Receiving Water Limitations (RWL) language. The EPA concluded that the RWL language in the permit did not comply with the federal Clean Water Act (CWA) and its implementing regulations. On April 27, 1999, the EPA reissued the MS4 permit, which the SDRWQCB adopted as Addendum No. 1 to Order No. R9-98-02 on November 8, 2000. On May 30, 2003 and in accordance with Order No. R9-98-02, NPDES Permit No. CAS0108766, *Waste Discharge Requirements for Urban Runoff from the Riverside County Flood Control and Water Conservation District, the County of Riverside, and the Incorporated Cities of Riverside County within the San Diego Region*, the District, as the Principal Permittee, submitted a Report of Waste Discharge (ROWD) for renewal of their MS4 Permit.
3. The Water Quality Control Plan for the San Diego Basin (Basin Plan), identifies the following beneficial uses for water bodies in the Santa Margarita Watershed: Municipal and Domestic Supply, Agricultural Supply, Industrial Process Supply, Industrial Service Supply, Ground Water Recharge, Contact Water Recreation (potential use), Non-contact Water Recreation, Warm Freshwater Habitat, Wildlife Habitat, and Rare, Threatened, or Endangered Species.
4. Urban runoff contains waste, as defined in the California Water Code (CWC), and pollutants that adversely affect the quality of the waters of the State. The discharge of urban runoff from an MS4 is a "discharge of pollutants from a point source" into waters of the United States as defined in the CWA.
5. The most common categories of pollutants that may be present in urban runoff include total suspended solids, sediment (due to anthropogenic activities); pathogens (e.g., bacteria, viruses, protozoa); heavy metals (e.g., copper, lead, zinc and cadmium); petroleum products and polynuclear aromatic hydrocarbons; synthetic organics (e.g., pesticides, herbicides, and PCBs); nutrients (e.g., nitrogen and phosphorus fertilizers), oxygen-demanding substances (decaying vegetation, animal waste), and trash.
6. The discharge of pollutants and/or increased flows from MS4s may cause or threaten to cause the concentration of pollutants to exceed applicable receiving water quality objectives and impair or threaten to impair designated beneficial uses resulting in a condition of pollution (i.e., unreasonable impairment of water quality for designated beneficial uses), contamination, or nuisance.
7. Pollutants in urban runoff can threaten human health. ~~Human illnesses have been clearly linked to recreating near storm drains flowing to coastal waters. (See Finding Comment No. 1)~~ Also, urban runoff pollutants in receiving waters can bioaccumulate in the tissues of invertebrates and fish, which may be eventually consumed by humans.
8. Development and urbanization may especially, (See Finding Comment No. 2) threaten environmentally sensitive areas (ESAs), such as water bodies designated as supporting a RARE beneficial use (supporting rare, threatened or endangered species) and CWA 303(d) impaired water bodies. Such areas have a much lower capacity to withstand pollutant shocks than might be acceptable in the general circumstance. In essence, development that is ordinarily insignificant in its impact on the environment may become significant in an ESA ~~particular sensitive environment~~.

Therefore, additional control to reduce pollutants from new and existing development may be necessary for areas adjacent to or discharging directly to an ESA environmentally sensitive area.

9. Urban runoff often contains pollutants that cause toxicity to aquatic organisms (i.e., adverse responses of organisms to chemicals or physical agents ranging from mortality to physiological responses such as impaired reproduction or growth anomalies). Toxic pollutants may impact the overall quality of aquatic systems and beneficial uses of receiving waters.
10. Peak storm water discharges rates, velocities and durations ~~may need to~~ must be controlled to prevent downstream erosion and protect stream habitat where receiving waters have not been stabilized. When natural vegetated pervious ground cover is converted to impervious surfaces such as paved highways, streets, rooftops, and parking lots, the natural absorption and infiltration abilities of the land may be ~~are~~ lost. Therefore, runoff leaving a developed urban area may be ~~is~~ significantly greater in volume, velocity, peak flow rate, and pollutant load than pre-development runoff from the same area. The increased volume, velocity, rate, and duration of runoff greatly may accelerate the erosion of downstream natural channels. (See Finding Comment No. 3).
11. As part of the ROWD, the Permittees proposed to update and modify their existing Drainage Area Management Plan (DAMP), dated March 1993, to incorporate new programs, requirements, and commitments. Direction to the Permittees in revising the DAMP, hereinafter referred to as a Storm Water Management Plan (SWMP), is necessary to ensure that the document provides a written description of the specific urban runoff management measures and programs that each Permittee will implement to fulfill its individual responsibilities and the area-wide and watershed-based activities necessary to meet the maximum extent practicable (MEP) standard. ~~It is practicable for the Permittees to update the SWMP within one year.~~ The SWMP is an integral and enforceable component of this Order.
12. The MEP standard is an ever-evolving, flexible, and advancing concept, which considers technical and economic feasibility. As knowledge about controlling urban runoff continues to evolve, so does that which constitutes MEP. Reducing the discharge of storm water pollutants to the MEP requires Permittees to conduct and document evaluation and assessment of each program component and revise activities, control measures, best management practices (BMPs), and measurable goals, as necessary to meet MEP. Because MEP is a dynamic performance standard, it is necessary to describe in greater detail, measures that are essential for compliance.
13. Pollutants can be effectively reduced in urban runoff by the application of a combination of pollution prevention, source control, and treatment control BMPs. Pollution prevention is the reduction or elimination of pollutant generation at its source and is the best "first line of defense". Source control BMPs (both structural and non-structural) minimize the contact between pollutants and flows (e.g., rerouting run-on around pollutant sources or keeping pollutants on-site and out of receiving waters). Treatment control BMPs remove pollutants from urban runoff.
14. Developing minimum BMPs and implementing or requiring their implementation at industrial and commercial facilities, construction sites, and residential areas is necessary for the Permittees to ensure that, ultimately, discharges of pollutants into and from its MS4 are reduced to the MEP.
15. Controlling urban runoff pollution by using a combination of onsite source control BMPs augmented with treatment control BMPs before the runoff enters the MS4 is important for the following reasons: (1) Many end-of-pipe BMPs (such as diversion to the sanitary sewer) are typically ineffective during significant storm events. Whereas, onsite source control BMPs can be applied during all runoff conditions; (2) End-of-pipe BMPs are often incapable of capturing and treating the wide range of pollutants which can be generated on a sub-watershed scale; (3) End-of-pipe BMPs are more effective when used as polishing BMPs, rather than the sole BMP to be implemented; (4) End-of-pipe BMPs do not protect the quality or beneficial uses of receiving waters between the source and the BMP; and (5) Offsite end-of-pipe BMPs do not aid in the effort to educate the public regarding sources

of pollution and their prevention.

16. Urban runoff treatment and/or mitigation must occur prior to the discharge of urban runoff into a receiving water. Federal regulations at 40 CFR 131.10(a) state that in no case shall a state adopt waste transport or waste assimilation as a designated use for any waters of the U.S. Authorizing the construction of an urban runoff treatment facility within a water of the U.S. body, or using the water of the U.S. body itself as a treatment system or for conveyance to a treatment system, would be tantamount to accepting waste assimilation as an appropriate use for that water of the U.S. body. Furthermore, the construction, operation, and maintenance of a pollution control facility in a water of the U.S. body can negatively impact the physical, chemical, and biological integrity, as well as the beneficial uses, of the water of the U.S. body. This is consistent with EPA guidance to avoid locating structural controls in natural wetlands. (See Finding Comment No. 5)
17. Historic and current developments make use of natural drainage patterns and features as conveyances for urban runoff. Urban streams used in this manner are both MS4s and receiving waters.
18. As operators of the MS4s, the Permittees cannot passively receive and discharge pollutants from third parties. By providing free and open access to an MS4 that conveys discharges to waters of the U.S., the operator essentially accepts responsibility for discharges into the MS4 that it does not prohibit or control. These discharges may cause or contribute to a condition of contamination or exceedances of receiving water quality objectives.
19. In accordance with federal NPDES regulations and to ensure the most effective oversight of industrial and construction site discharges, discharges of runoff from industrial and construction sites are subject to dual (state and local) storm water regulation. Under this dual system, the SDRWQCB is responsible for enforcing the statewide General Construction Activities Storm Water Permit, SWRCB Order 97-03 DWQ, NPDES No. CAS000001 (General Construction Permit) and the General Industrial Activities Storm Water Permit, SWRCB Order 99-08 DWQ, NPDES No. CAS000002 (General Industrial Permit), and Each municipal Permittee is responsible for implementing a program including inspections to implement and enforce an ordinance to prevent illicit discharges to the MS4 [§122.26 (d)(iv)(B)] and implementing a program to inspect construction sites to enforce control measures to reduce pollutants in storm water runoff from construction sites [§122.26(d)(iv)(D)], which include enforcing its local permits, plans, and ordinances, which may require the implementation of additional BMPs than required under the statewide general permits.
20. This Order implements the federal CWA, the Porter-Cologne Water Quality Control Act (Division 7 of the CWC, commencing with section 13000), applicable state and federal regulations, all applicable provisions of statewide Water Quality Control Plans and Policies adopted by the State Water Resources Control Board (SWRCB), and the Basin Plan.
21. The RWL language specified in this Order is consistent with language recommended by the EPA and established in SWRCB Water Quality Order WQ-99-05, adopted by the SWRCB on June 17, 1999. The RWL in this Order require compliance with water quality standards through an iterative approach requiring the implementation of improved and better-tailored BMPs over time.
22. The Standard Urban Storm Water Management Plan (SUSMP) requirements contained in this Order are consistent with Order WQ-2000-11 adopted by the SWRCB on October 5, 2000. In the precedential order, the SWRCB found that the design standards, which essentially require that urban runoff generated by 85 percent of storm events from specific development categories be infiltrated or treated, reflects the MEP standard. The order also found that the design standards are appropriately applied to the majority of the priority development project categories contained in this Order. It gave Regional Water Quality Control Boards (RWQCBs) the discretion to include additional categories and locations, such as retail gasoline outlets (RGOs) and ESAs, in future SUSMPs.
23. RGOs are significant sources of pollutants in urban runoff. RGOs are points of convergence for motor vehicles for automotive related services such as repair, refueling, tire inflation, and radiator fill-up and

consequently produce significantly higher loadings of hydrocarbons and trace metals (including copper and zinc) than other urban areas. To meet MEP, source control and treatment control BMPs are needed at RGOs that meet the following criteria: (a) 5,000 square feet or more, or (b) a projected Average Daily Traffic (ADT) of 100 or more vehicles per day. These are appropriate thresholds since vehicular development size and volume of traffic are good indicators of potential impacts of urban runoff from RGOs on receiving waters. (See Finding Comment No. 6).

24. This Order is in conformance with SWRCB Resolution No. 68-16 and the federal Antidegradation Policy described in 40 CFR 131.12.
25. Section 6217(g) of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) requires coastal states with approved coastal zone management programs to address non-point pollution impacting or threatening coastal water quality. CZARA addresses five sources of non-point pollution: agriculture, silviculture, urban, marinas, and hydromodification. This NPDES permit addresses the management measures required for the urban category, with the exception of septic systems. The adoption and implementation of this NPDES permit relieves the Permittee from developing a non-point source plan, for the urban category, under CZARA. The SDRWQCB addresses septic systems through the administration of other programs. (See Finding Comment No. 7).
26. Each Permittee is individually responsible for adoption and enforcement of ordinances and/or policies, implementation of identified control measures/BMPs needed to prevent or reduce pollutants in storm water runoff, and for the allocation of funds for the capital, operation and maintenance, and enforcement expenditures necessary to implement and enforce such control measures/BMPs under within its jurisdiction. (See Finding Comment No. 8).
27. Although dependent on several factors, the risks typically associated with properly managed infiltration of runoff (especially from residential land use areas) are not significant. The risks associated with infiltration can be managed by many techniques, including (1) designing landscape drainage features that promote infiltration of runoff, but do not "inject" runoff (injection bypasses the natural processes of filtering and transformation that occur in the soil); (2) taking reasonable steps to prevent the illegal disposal of wastes; and (3) ensuring that each drainage feature is adequately maintained in perpetuity.
28. If not properly designed or maintained, certain BMPs implemented or required by municipalities for urban runoff management may create a habitat for vectors (e.g. mosquitoes and rodents). However, proper BMP design to avoid standing water can prevent the creation of vector habitat. Nuisances and public health impacts resulting from vector breeding can be prevented with close collaboration and cooperative effort between municipalities and local vector control agencies and the State Department of Health Services during the development and implementation of the SWMP.
29. The issuance of waste discharge requirements and an NPDES permit for the discharge of urban runoff from MS4s to waters of the United States is exempt from the requirement for preparation of environmental documents to the extent that actions are required under the CWA under the California Environmental Quality Act (CEQA) (Public Resources Code, Division 13, Chapter 3, section 21000 et seq.) in accordance with the CWC section 13389.
30. The SDRWQCB has notified the Permittees, all known interested parties, and the public of its intent to consider adoption of an Order prescribing waste discharge requirements that would serve to renew an NPDES permit for the existing discharge of urban runoff.
31. The SDRWQCB has, at public meetings on February 11, 2004 and April 14, 2004, held public hearings and heard and considered all comments pertaining to the terms and conditions of this Order.

PERMIT PROVISIONS

IT IS HEREBY ORDERED: That the Permittees, in order to meet the provisions contained in Division 7 of the CWC and regulations adopted thereunder, and the provisions of the CWA and regulations adopted thereunder, shall each comply with the following:

A. PROHIBITIONS

1. Discharges into and from MS4s in a manner causing, or threatening to cause, a condition of pollution, contamination, or nuisance (as defined in CWC section 13050), in waters of the state are prohibited.
2. Discharges from MS4s that cause or contribute to exceedances of receiving water quality objectives for surface water or groundwater are prohibited.
3. Discharges from MS4s containing pollutants which have not been reduced to the MEP are prohibited.
4. In addition to the above prohibitions, discharges from MS4s are subject to all Basin Plan prohibitions cited in **Attachment A** to this Order.

B. NON-STORM WATER DISCHARGES

1. Each Permittee shall effectively prohibit all types of non-storm water discharges into its MS4 unless such discharges are either authorized by a separate NPDES permit; or authorized in accordance with Requirements B.2 and B.3 below.
2. The following categories of non-storm water discharges are not prohibited unless a Permittee or the SDRWQCB identifies the discharge category as a source of pollutants to waters of the U.S. For such a discharge category, the Permittee shall either prohibit the discharge category or develop and implement appropriate control measures under the SWMP to reduce pollutants to the MEP and submit the report to the SDRWQCB pursuant to section IV.A.1.d of the Monitoring and Reporting Program.
 - a) Diverted stream flows;
 - b) Rising ground waters;
 - c) Uncontaminated ground water infiltration [as defined at 40 CFR 35.2005(20)] to MS4s;
 - d) Uncontaminated pumped ground water;
 - e) Foundation drains;
 - f) Springs;
 - g) Water from crawl space pumps;
 - h) Footing drains;
 - i) Air conditioning condensation;
 - j) Flows from riparian habitats and wetlands;
 - k) Water line flushing;
 - l) Landscape irrigation;
 - m) Discharges from potable water sources other than water main breaks;
 - n) Irrigation water;
 - o) Lawn watering;
 - p) Individual residential car washing;
 - q) Non-emergency fire fighting flows; and
 - r) Dechlorinated swimming pool discharges.

3. Discharges from emergency fire fighting activities are not prohibited. If discharges are determined to be a significant source of pollutants to waters of the U.S., the Permittees shall require the implementation of appropriate BMPs to reduce the discharge of pollutants to the MEP, when not interfering with the protection of health and property.
4. Each Permittee shall examine its dry weather monitoring results collected in accordance with Requirement J.3 of this Order and section 11.B of the Monitoring and Reporting Program to identify water quality problems which may be the result of any non-prohibited discharge category(ies) listed above in Requirement B.2. Follow-up investigations shall be conducted as necessary to identify and control any non-prohibited discharge category(ies) listed above.

C. **RECEIVING WATER LIMITATIONS**

1. Discharges from MS4s that cause or contribute to the violation of water quality standards (designated beneficial uses and water quality objectives developed to protect beneficial uses of receiving waters) are prohibited.
2. Each Permittee shall comply with Requirement C.1, Prohibition A.2, and Prohibition A.4 as it applies to Prohibition No. 5 in **Attachment A** of this Order through timely implementation of control measures and other actions to reduce pollutants in urban runoff discharges in accordance with the SWMP and other requirements of this Order including any modifications. The SWMP shall be designed to achieve compliance with Requirement C.1, Prohibition A.2, and Prohibition A.4 as it applies to Prohibition 5 in **Attachment A** of this Order. If exceedance(s) of water quality standards persist notwithstanding implementation of the SWMP and other requirements of this Order, the Permittee shall assure compliance with Requirement C.1, Prohibition A.2, and Prohibition A.4 as it applies to Prohibition 5 in **Attachment A** of this Order by complying with the following procedure:
 - a) Upon a determination by either a Permittee or the SDRWQCB that MS4 discharges are causing or contributing to an exceedance of an applicable water quality standard, the Permittee shall promptly notify and thereafter submit a report to the SDRWQCB that describes BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce any pollutants that are causing or contributing to the exceedance of water quality standards. The report may be incorporated in the SWMP Annual Report unless the SDRWQCB directs an earlier submittal. The report shall include an implementation schedule. The SDRWQCB may require modifications to the report.
 - b) Submit any modifications to the report required by the SDRWQCB within 30 days of notification;
 - c) Within 30 days following SDRWQCB approval of the report described above, the Permittee shall revise its SWMP and monitoring program to incorporate the approved modified BMPs that have been and will be implemented, the implementation schedule, and any additional monitoring required;
 - d) Implement the revised SWMP and monitoring program in accordance with the approved schedule.

So long as the Permittee has complied with the procedures set forth above and are implementing the revised SWMP, the Permittee does not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the SDRWQCB to develop additional BMPs.

D. LEGAL AUTHORITY

1. Each Permittee shall establish, maintain, and enforce adequate legal authority to control pollutant discharges under its jurisdiction into and from its MS4 through ordinance, statute, permit, contract or similar means. This legal authority must, at a minimum, authorize the Permittee to:
 - a) Control the contribution of pollutants in discharges of runoff associated with industrial and construction activity to its MS4 and control the quality of runoff from industrial and construction sites under its jurisdiction. This requirement applies both to industrial and construction sites under its jurisdiction that have coverage under the General Industrial Permit and General Construction Permit, as well as to those sites that do not. Grading ordinances shall be upgraded and enforced as necessary to comply with this Order.
 - b) Prohibit all identified illicit discharges not otherwise allowed pursuant to Requirement B.2 including but not limited to:
 - (1) Sewage;
 - (2) Discharges of wash water resulting from the hosing or cleaning of gas stations, auto repair garages, or other types of automotive services facilities;
 - (3) Discharges resulting from the cleaning, repair, or maintenance of any type of equipment, machinery, or facility including motor vehicles, cement-related equipment, and port-a-potty servicing, etc.;
 - (4) Discharges of wash water from mobile operations such as mobile automobile washing, steam cleaning, power washing, and carpet cleaning, etc.;
 - (5) Discharges of wash water from the cleaning or hosing of impervious surfaces in municipal, industrial, commercial, and residential areas including parking lots, streets, sidewalks, driveways, patios, plazas, work yards and outdoor eating or drinking areas, etc.;
 - (6) Discharges of runoff from material storage areas containing chemicals, fuels, grease, oil, or other hazardous materials;
 - (7) Discharges of pool or fountain water containing chlorine, biocides, or other chemicals; discharges of pool or fountain filter backwash water;
 - (8) Discharges of sediment, pet waste, vegetation clippings, or other landscape or construction-related wastes; and
 - (9) Discharges of food-related wastes (e.g., grease, fish processing, and restaurant kitchen mat and trash bin wash water, etc.).
 - c) Prohibit and eliminate illicit connections to the MS4;
 - d) Control the discharge of spills, dumping, or disposal of materials other than storm water to its MS4;
 - e) Require compliance with conditions in Permittee ordinances, permits, contracts or orders (i.e., hold dischargers to its MS4 accountable for their contributions of pollutants and flows);

- f) Require the use of BMPs to prevent or reduce the discharge of pollutants into MS4s to the MEP.
 - g) Carry out all inspections, surveillance, and monitoring necessary to determine compliance and noncompliance with local ordinances and permits and with this Order, including the prohibition on illicit discharges to the MS4. This means the Permittee must have authority to enter, sample, inspect, review and copy records, and require regular reports from industrial facilities discharging into its MS4, including construction sites;
 - h) Utilize enforcement mechanisms to require compliance with Permittee storm water ordinances, permits, contracts, or orders; and
 - i) Control the contribution of pollutants from one portion of the shared MS4 to another portion of the MS4 through interagency agreements among Permittees;
2. Each Permittee shall include as part of its Individual SWMP, which must be submitted within ~~365~~ 640 days of adoption of this Order, a statement certified by its chief legal counsel that the Permittee has adequate legal authority to implement and enforce each of the requirements contained in 40 CFR 122.26(d)(2)(i)(A-F) and this Order.

E. STORM WATER MANAGEMENT PLAN (SWMP)

1. Within ~~365~~ 640 days from the date of this Order, the Principal Permittee shall submit a SWMP to the SDRWQCB. The SWMP shall describe the various urban runoff management programs that will be implemented to comply with this Order and to reduce pollutants in urban runoff to the MEP for the duration of this Order. The SWMP is an integral and enforceable component of this Order and shall consist of the following:
- a) Individual SWMP - The written description of each Permittee's individual programs that address Sections B through J of this Order. **Attachment D** contains direction for the preparation of the Individual SWMP. Each Permittee shall submit their Individual SWMP to the Principal Permittee by a date determined by the Principal Permittee for inclusion in the SWMP.
 - b) Watershed SWMP - The written account of all area-wide and watershed-based programs and activities conducted by the Permittees. The Watershed SWMP shall contain the programs and items required above in Requirements K.1 – K.4 of this Order.
2. Unless otherwise specified, within 365 days of the adoption of this Order, each Permittee shall have completed full implementation of those applicable elements of the SWMP and all requirements in this Order not requiring ordinance revision. Those elements of the SWMP and requirements of the Order requiring ordinance revision shall be implemented within 640 days of the adoption of this Order. Prior to the implementation of new or revised programs, each Permittee shall, at a minimum, continue implementation of existing programs developed pursuant to Order No. R9-98-02 and described in the 2002-2003 Annual Progress Report.
3. Each Permittee shall incorporate a mechanism for public participation during the development and implementation of its SWMP.
4. The Permittees may, as part of their first annual report due October 31, 2004, identify specific requirements of this Order that will require Ordinance revision. Those requirements that are identified in the first Annual Report, and the

necessary Ordinance revisions, shall be implemented within 640 days of the date of this Order.

F. DEVELOPMENT PLANNING

Permittees shall implement a program, including but not limited to, the requirements in this section, to reduce pollutants in urban runoff from developments to the MEP.

1. Assess General Plan

Each Permittee's General Plan or equivalent plan (e.g., Comprehensive, Master, or Community Plan) shall include water quality and watershed protection principles and policies to direct land-use decisions and require implementation of consistent water quality protection measures for development projects. As part of its Individual SWMP, each Permittee shall provide a workplan with a time schedule detailing any changes to its General Plan regarding water quality and watershed protection. Examples of water quality and watershed protection principles and policies to be considered include the following:

- a) Minimize the amount of impervious surfaces and directly connected impervious surfaces in areas of development and, where feasible, slow runoff and maximize on-site infiltration of runoff.
- b) Implement pollution prevention methods supplemented by source control and treatment control BMPs. Use small collection strategies located at, or as close as possible to, the source (i.e., the point where water initially meets the ground) to minimize the transport of urban runoff and pollutants offsite and into an MS4.
- c) Preserve, and where possible, create or restore areas that provide important water quality benefits, such as riparian corridors, wetlands, and buffer zones. Encourage land acquisition of such areas.
- d) Limit disturbances of natural water bodies and natural drainage systems caused by development including roads, highways, and bridges.
- e) Prior to making land use decisions, utilize methods available to estimate increases in pollutant loads and flows resulting from projected future development. Require incorporation of appropriate BMPs to mitigate the projected increases in pollutant loads and flows.
- f) Avoid development of areas that are particularly susceptible to erosion and sediment loss; or establish development guidance that identifies these areas and protects them from erosion and sediment loss.
- g) Reduce pollutants associated with vehicles and increasing traffic resulting from development.
- h) Post-development runoff from a site shall not contain pollutant loads that cause or contribute to an exceedance of receiving water quality objectives and which have not been reduced to the MEP.

2. Modify Development Project Approval Processes

- a) Requirements for all Development Projects (New Development and Redevelopment)

During the planning process, prior to the issuance of permits, Permittees shall require all proposed development projects to implement BMPs to ensure that the discharge of pollutants from the development will be reduced to the MEP and will comply with this Order and all local ordinances, plans, and permits. Development project requirements shall ensure that receiving water quality

objectives are not violated throughout the life of the development. At a minimum, requirements shall:

- (1) Require project proponent to implement applicable pollution prevention and source control BMPs for applicable development projects.
- (2) Require project proponent to implement site design/landscape characteristics where feasible which maximize infiltration, provide retention, slow runoff, and minimize impervious land coverage for all development projects.
- (3) Require project proponent to incorporate buffer zones for natural water bodies, where feasible. Where buffer zones are infeasible, require project proponent to implement other buffers such as trees, access restrictions, etc.
- (4) When known, require industrial facility operators subject to the General Industrial Permit to provide evidence of permit coverage prior to occupancy.
- (5) Require project proponent to ensure its grading or other construction activities meet the provisions specified in Section G of this Order.
- (6) Require project proponent to provide proof of a mechanism which will ensure ongoing long-term maintenance of all structural post-construction BMPs.

b) Standard Urban Storm Water Mitigation Plans (SUSMPs) – Requirements for Priority Development Projects

Within 640365 days of adoption of this Order, each Permittee shall develop, adopt, and implement a SUSMP to reduce pollutants to the MEP and to maintain or reduce downstream erosion and protect stream habitat from all Priority Development Projects. Priority Development Projects are: a) all new development projects, and b) those redevelopment projects that create, add or replace at least 5,000 square feet of impervious surfaces on an already developed site, that are listed under the project categories or locations in Requirement F.2.b.(1) below. Redevelopment includes, but is not limited to: the expansion of a building footprint or addition or replacement of a structure; structural development including an increase in gross floor area and/or exterior construction or remodeling; replacement of impervious surface that is not part of a routine maintenance activity; and land disturbing activities related with structural or impervious surfaces. Where redevelopment results in an increase of less than fifty percent of the impervious surfaces of a previously existing development, and the existing development was not subject to SUSMP requirements, the numeric sizing criteria discussed in Requirement F.2.b.(3) applies only to the addition, and not to the entire development. Each Permittee shall submit both the adopted SUSMP and amended ordinances to the SDRWQCB no later than 640365 days after the adoption of this Order.

Immediately following adoption of its SUSMP, each Permittee shall review and ensure that all Priority Development Projects meet SUSMP requirements. The SUSMP requirements shall apply to all Priority Development Projects or phases of Priority Development Projects that have not yet begun grading or construction activities. If a Permittee determines that lawful prior approval of a project exists, whereby application of SUSMP requirements to the project is infeasible, SUSMP requirements need not apply to the project. Where feasible, the Permittees shall utilize the 4221-month SUSMP development and implementation period to ensure that projects undergoing approval processes include application of SUSMP requirements in their plans.

(1) Priority Development Project Categories

- (a) *Housing subdivisions of 10 or more dwelling units.* This category includes single-family homes, multi-family homes, condominiums, and apartments.
- (b) *Commercial developments greater than 100,000 square feet.* This category is defined as any development on private land that is not for heavy industrial or residential uses where the land area for development is greater than 100,000 square feet. The category includes, but is not limited to: hospitals; laboratories and other medical facilities; educational institutions; recreational facilities; municipal facilities; commercial nurseries; multi-apartment buildings; car wash facilities; mini-malls and other business complexes; shopping malls; hotels; office buildings; public warehouses; automotive dealerships; airfields; and other light industrial facilities.
- (c) *Automotive repair shops.* This category is defined as a facility that is categorized in any one of the following Standard Industrial Classification (SIC) codes: 5013, 5014, 5541, 7532-7534, or 7536-7539.
- (d) *Restaurants.* This category is defined as a facility that sells prepared foods and drinks for consumption, including stationary lunch counters and refreshment stands selling prepared foods and drinks for immediate consumption (SIC code 5812), where the land area for development is greater than 5,000 square feet. Restaurants where land development is less than 5,000 square feet shall meet all SUSMP requirements except for structural treatment BMP and numeric sizing criteria requirement F.2.b.(3) and peak flow rate requirement F.2.b.(2)(a).
- (e) *All hillside development greater than 5,000 square feet.* This category is defined as any development which creates 5,000 square feet of impervious surface which is located in an area with known erosive soil conditions, where the development will grade on any natural slope that is twenty-five percent or greater.
- (f) *Environmentally Sensitive Areas (ESAs).* All development located within or directly adjacent to or discharging directly to an ESA (where discharges from the development or redevelopment will enter receiving waters within the ESA), which either creates 2,500 square feet of impervious surface on a proposed project site or increases the area of imperviousness of a proposed project site to 10% or more of its naturally occurring condition. "Directly adjacent" means situated within 200 feet of the ESA. "Discharging directly to" means outflow from a drainage conveyance system that is composed entirely of flows from the subject development or redevelopment site, and not commingled with flows from adjacent lands.
- (g) *Parking lots 5,000 square feet or more or with 15 or more parking spaces (See Permit Text Comment No. 3)*

and potentially exposed to urban runoff. Parking lot is defined as a land area or facility for the temporary parking or storage of motor vehicles used personally, for business, or for commerce.

- (h) *Street, roads, highways, and freeways.* This category includes any paved surface that is 5,000 square feet or greater used for the transportation of automobiles, trucks, motorcycles, and other vehicles.

~~(i) *Retail Gasoline Outlets.* This category includes RGOs that meet the following criteria: (a) 5,000 square feet or more or (b) a projected Average Daily Traffic (ADT) of 100 or more vehicles per day (See Permit Text Comment No. 4).~~

- (2) BMP Requirements - The SUSMP shall include a list of recommended source control and treatment control BMPs. The SUSMP shall require all Priority Development Projects to implement a combination of ~~on-site~~ BMPs (to treat the runoff specifically generated from each project) selected from the recommended BMP list, including at a minimum: (4A) Source control BMPs, and (2B) onsite and/or regional Treatment control BMPs. The BMPs shall, at a minimum:

- (a) Control the post-development urban runoff discharge velocities, volumes, durations, and peak rates based on the runoff peak rates or volumes calculated from the numeric sizing criteria provided in Provision F.2.b.3 below, as needed to maintain or reduce pre-development downstream erosion, and to protect stream habitat; (See Permit Text Comment No. 5).
- (b) Conserve natural areas where feasible;
- (c) Minimize storm water pollutants of concern in urban runoff from the Priority Development Projects (through implementation of source control BMPs). Identification of pollutants of concern shall include, at a minimum, all pollutants for which water bodies receiving the development's runoff are listed as impaired under CWA section 303(d), all pollutants associated with the land use type of the development, and all pollutants commonly associated with urban runoff;
- (d) Be effective at removing or treating the pollutants of concern associated with the project;
- (e) Minimize directly connected impervious areas where feasible;
- (f) Protect slopes and channels from eroding;
- (g) Include storm drain stenciling and signage;
- (h) Include properly designed outdoor material storage areas;
- (i) Include properly designed trash storage areas;
- (j) Include proof of a mechanism, to be provided by the project proponent or Permittee, which will ensure ongoing long-term BMP maintenance;

- (k) Include additional water quality provisions applicable to individual priority project categories;
- (l) Be correctly designed so as to remove pollutants to the MEP;
- (m) Be implemented close to pollutant sources, when feasible, and prior to discharging into receiving waters; and
- (n) Ensure that post-development runoff does not contain pollutant loads which cause or contribute to an exceedance of water quality objectives and which have not been reduced to the MEP.

Under no circumstances can a BMP be constructed in a water of the U.S. receiving water.

- (3) Numeric Sizing Criteria – The SUSMP shall require treatment control BMPs to be implemented for all Priority Development Projects. All treatment control BMPs shall be located so as to infiltrate, filter, or treat the required runoff volume or flow prior to its discharge to any receiving water. Treatment control BMPs may be shared by multiple Priority Development Projects as long as construction of any shared treatment control BMPs is completed prior to the use of any development project from which the treatment control BMP will receive runoff, and prior to discharge to a receiving water.

In addition to meeting the BMP requirements listed in Requirement F.2.b.(2) above, all treatment control BMPs for a single Priority Development Project shall collectively be sized to comply with the following numeric sizing criteria:

- (a) Volume - Volume-based BMPs shall be designed to mitigate (infiltrate, filter, or treat) either:
 - (i) The volume of runoff produced from a 24-hour 85th percentile ~~storm-rainfall event~~^{depth}, as determined from the local historical rainfall record (0.6 inch approximate average for the Riverside County area)³; or
 - (ii) The volume of runoff produced by the 85th percentile 24-hour ~~rainfall-runoff event~~, determined as the maximized capture storm water volume for the area, from the formula recommended in Urban Runoff Quality Management, WEF Manual of Practice No. 23/ASCE Manual of Practice No. 87, (1998); or
 - (iii) The volume of annual runoff based on unit basin storage volume, to achieve ~~99~~80% (See Permit

³ This volume is not a single volume to be applied to all of Riverside County. The size of the 85th percentile storm event is different for various parts of the County. The Permittees are encouraged to calculate the 85th percentile storm event for each of their jurisdictions using local rain data pertinent to their particular jurisdiction (inch standard is a rough average for the County and should only be used where appropriate rain data is not available). In addition, isopluvial maps may be used to extrapolate rainfall data to areas where insufficient data exists in order to determine the volume of the local 85th percentile storm event in such areas. Where the Permittees will use isopluvial maps to determine the 85th percentile storm event in areas lacking rain data, the Permittees shall describe their method for using isopluvial maps in their SUSMPs.

Text Comment No. 7) or more volume treatment by the method recommended in *California Stormwater Best Management Practices Handbook New Development and Redevelopment* (2003)); or

- (iv) The volume of runoff, as determined from the local historical rainfall record, that achieves approximately the same reduction in pollutant loads and flows as achieved by mitigation of the 85th percentile 24-hour runoff event;⁴

OR

- (b) *Flow* - Flow-based BMPs shall be designed to mitigate (infiltrate, filter, or treat) either:

- (i) The maximum flow rate of runoff produced from a rainfall intensity of 0.2 inch of rainfall per hour, for each hour of a storm event; or
- (ii) The maximum flow rate of runoff produced by the 85th percentile hourly rainfall intensity (for each hour of a storm event), as determined from the local historical rainfall record, multiplied by a factor of two; or
- (iii) The maximum flow rate of runoff for each hour of a storm event, as determined from the local historical rainfall record, that achieves approximately the same reduction in pollutant loads and flows as achieved by mitigation of the 85th percentile hourly rainfall intensity multiplied by a factor of two.

- (4) ~~Equivalent Numeric Sizing Criteria~~ - The Permittees may develop, as part of the SUSMP, any equivalent method for ~~calculating the mitigating volume or flow impacts which must be mitigated (i.e., any equivalent method for calculating numeric sizing criteria) by post-construction treatment control BMPs.~~ Such equivalent sizing criteria may be authorized by the SDRWQCB for use in place of the above criteria. In the absence of development and subsequent authorization of such equivalent ~~numeric sizing criteria~~, the above numeric sizing criteria requirement shall be implemented.

- (5) ~~Pollutants or Conditions of Concern~~ - As part of the SUSMP, the Permittees shall develop a procedure for pollutants or conditions of concern to be identified for each Priority Development Project. The procedure shall address, at a minimum: (1) Receiving water quality (including pollutants for which receiving waters are listed as impaired under CWA section 303(d)); (2) Land use type of the development project and pollutants associated with that land use type; (3) Pollutants expected to be present on site; (4) Changes in storm water discharge flow rates, velocities, durations, and volumes resulting from the development project; and (5)

⁴ Under this volume criteria, hourly rainfall data may be used to calculate the 85th percentile storm event, where each storm event is identified by its separation from other storm events by at least six hours of no rain. Where the Permittees may use hourly rainfall data to calculate the 85th percentile storm event, the Permittees shall describe their method for using hourly rainfall data to calculate the 85th percentile storm event in their SUSMPs.

Sensitivity of receiving waters to changes in storm water discharge flow rates, velocities, durations, and volumes.

- (6) Implementation Process – As part of the SUSMP, the Permittees shall develop a process by which SUSMP requirements will be implemented. The process shall identify at what point in the planning process development projects will be required to meet SUSMP requirements. The process shall also include identification of the roles and responsibilities of various municipal departments in implementing the SUSMP requirements, as well as any other measures necessary for the implementation of SUSMP requirements.
- (7) Waiver Provision – A Permittee may provide for a project to be waived from the requirement of implementing all treatment control BMPs (Requirements F.2.b.(2) & F.2.b.(3)) if infeasibility can be established. A waiver of infeasibility shall only be granted by a Permittee when all available treatment control BMPs have been considered and rejected as infeasible. Permittees shall notify the SDRWQCB within 5 days of each waiver issued and shall include the following information in the notification:
 - (a) Name of the person granting each waiver;
 - (b) Name of developer receiving the waiver;
 - (c) Site location;
 - (d) Reason for waiver; and
 - (e) Description of BMPs required.

As part of the SUSMP, the Permittees may develop a program to require project proponents who have received waivers to transfer the savings in cost, as determined by the Permittee(s), to a storm water mitigation fund. This program may be implemented by all Permittees that choose to provide waivers. Funds may be used on projects to improve urban runoff quality within the watershed of the waived project. The waiver mitigation program should, at a minimum, identify:

- (a) The entity or entities that will manage the storm water mitigation fund (i.e., assume full responsibility for);
 - (b) The range and types of acceptable projects for which mitigation funds may be expended;
 - (c) The entity or entities that will assume full responsibility for each mitigation project including its successful completion; and
 - (d) How the dollar amount of fund contributions will be determined.
- (8) Infiltration and Groundwater Protection – To protect groundwater quality, each Permittee shall apply restrictions to the use of treatment control BMPs that are designed to primarily function as infiltration devices (such as infiltration trenches and infiltration basins). Such restrictions shall ensure that the use of such infiltration treatment control BMPs shall not cause or contribute to an exceedance of groundwater quality objectives. At a minimum, use of treatment control BMPs which are designed to primarily function as infiltration devices shall meet the following

conditions.⁵ As part of the SUSMP, the Permittees may develop alternative restrictions on the use of treatment control BMPs which are designed to primarily function as infiltration devices.

- (a) ~~Urban runoff shall undergo pretreatment such as sedimentation or filtration prior to infiltration;~~
 - (b) ~~All dry weather flows shall be diverted from infiltration devices;~~
 - (c) Pollution prevention and source control BMPs shall be implemented at a level appropriate to protect groundwater quality at sites where infiltration treatment control BMPs are to be used;
 - (d) Infiltration treatment control BMPs shall be adequately maintained so that they remove pollutants to the MEP;
 - (e) The vertical distance from the base of any infiltration treatment control BMP to the seasonal high groundwater mark shall be at least 10 feet. Where groundwater basins do not support beneficial uses, this vertical distance criteria may be reduced, provided groundwater quality is maintained;
 - (f) The soil through which infiltration is to occur shall have physical and chemical characteristics (such as appropriate cation exchange capacity, organic content, clay content, and infiltration rate) which are adequate for proper infiltration durations and treatment of urban runoff for the protection of groundwater beneficial uses;
 - (g) Infiltration treatment control BMPs shall not be used for areas of industrial or light industrial activity; areas subject to high vehicular traffic (25,000 or greater average daily traffic on main roadway or 15,000 or more average daily traffic on any intersecting roadway); automotive repair shops; car washes; fleet storage areas (bus, truck, etc.); nurseries; and other high threat to water quality land uses and activities as designated by each Permittee; and
 - (h) Infiltration treatment control BMPs shall be located a minimum of 100 feet horizontally from any water supply wells. As part of the SUSMPs, the Permittees may develop alternative restrictions on the use of treatment control BMPs that are designed to primarily function as infiltration devices.
- (9) Downstream Erosion - The Permittees shall develop numeric criteria to ensure that discharges from Priority Development Projects maintain or reduce pre-development downstream erosion and protect stream habitat. At a minimum, numeric criteria shall be developed to control urban runoff discharge velocities, volumes, durations, and peak rates as necessary in order to maintain or reduce pre-development downstream erosion and protect stream habitat for discharge peak flow rates or volumes calculated from the numeric sizing criteria provided in Provision F.2.b.3. ~~Development of the numeric criteria with its~~

⁵ These conditions do not apply to treatment control BMPs that allow incidental infiltration and are not designed to primarily function as infiltration devices (such as grassy swales, detention basins, vegetated buffer strips, constructed wetlands, etc.).

~~supporting documentation shall be completed in 2008 and submitted with the Permittees' application for renewal of this Order. The Permittees shall review the final downstream erosion study prepared by Ventura County Flood Control District and the Southern California Coastal Research Project. The Permittees shall be prepared to implement the numeric criteria upon April 2009 NPDES Permit application shall include a list of recommended changes to Permittee erosion controls based on a review of the study's findings. renewal of this NPDES permit in April 2009.~~

3. Revise Environmental Review Processes

Permittees shall revise their current environmental review processes as necessary to include requirements for evaluation of water quality effects resulting from runoff from proposed New Development and Significant Redevelopment projects and identification of appropriate mitigation measures. The following questions are examples to be considered in addressing increased pollutants and flows from proposed projects:

- a) Could the proposed project result in an increase in pollutant discharges to receiving waters? Consider water quality parameters such as temperature, dissolved oxygen, turbidity and other typical storm water pollutants (e.g., heavy metals, pathogens, petroleum derivatives, synthetic organics, sediment, nutrients, oxygen-demanding substances, and trash).
- b) Could the proposed project result in significant alteration of receiving water quality during or following construction?
- c) Could the proposed project result in increased impervious surfaces and associated increased runoff?
- d) Could the proposed project create a significant adverse environmental impact to drainage patterns due to changes in runoff flow rates or volumes?
- e) Could the proposed project result in increased erosion downstream?
- f) Is the project tributary to an already impaired water body, as listed on the CWA section 303(d) list? If so, can it result in an increase in any pollutant for which the water body is already impaired?
- g) Is the project tributary to an ESA ~~other environmentally sensitive areas~~? If so, can it exacerbate already existing sensitive conditions?
- h) Could the proposed project have a potentially significant environmental impact on surface water quality of marine, fresh, or wetland waters?
- i) Could the proposed project have a potentially significant adverse impact on groundwater quality?
- j) Could the proposed project cause or contribute to an exceedance of applicable surface or groundwater receiving water quality objectives or degradation of beneficial uses?
- k) Can the project impact aquatic, wetland, or riparian habitat?

4. Conduct Education Efforts Focused on Development

- a) Internal: Municipal Staff

Each Permittee shall implement an education program that includes annual training to ensure that planning and development review staffs (and Planning Boards and Elected Officials, if applicable) have an understanding of:

- (1) Federal, state, and local water quality laws and regulations applicable to development projects;
 - (2) The connection between land use decisions and short and long-term water quality impacts (i.e., impacts from land development and urbanization); and
 - (3) How impacts to receiving water quality resulting from development can be minimized (i.e., through implementation of various source control and treatment control BMPs).
- b) External: Project Applicants, Developers, Contractors, Property Owners, Community Planning Groups

As early in the planning and development process as possible, each Permittee shall implement a program to educate project applicants, developers, contractors, property owners, and community planning groups on the following topics:

- (1) Federal, state, and local water quality laws and regulations applicable to development projects;
- (2) Required federal, state, and local permits pertaining to water quality;
- (3) Potential ~~Water~~ water quality impacts of urbanization; and
- (4) Methods for minimizing the impacts of development on receiving water quality.

G. CONSTRUCTION

Each Permittee shall implement a program to address construction sites to reduce pollutants in runoff to the MEP during all construction phases. At a minimum the construction component shall address:

1. Pollution Prevention

Each Permittee shall implement pollution prevention methods in its Construction Component and shall require its use by construction site owners, developers, contractors, and other responsible parties, where appropriate.

2. Grading Ordinance Update

Within ~~180-640~~ days of adoption of this Order, each Permittee shall review and update its grading ordinances as necessary for compliance with its storm water ordinances and this Order. The updated grading ordinance shall require implementation of BMPs designated by the Permittees pursuant to Requirements G.5 of this Order and other measures during all construction activities.

3. Modify Construction and Grading Approval Process

Each Permittee shall develop and implement a process to ensure that BMPs to reduce the discharge of pollutants to the MEP are applicable to construction and grading permits and plans prior to their approval and issuance. Such BMPs shall include the following requirements or their equivalent:

- a) ~~Require Review project proponent to develop and implement a plan to site plans manage prior to groundbreaking to ensure measures are taken to~~ manage storm water and non-storm water discharges from the site at all times;
- b) Require project proponent to minimize grading during the wet season and coincide grading with seasonal dry weather periods to the extent feasible.

If grading does occur during the wet season, require project proponent to implement additional BMPs for any rain events which may occur, as necessary for compliance with this Order;

- c) Require project proponent to emphasize erosion prevention as the most important measure for keeping sediment on site during construction;
- d) Require project proponent to utilize sediment controls as a supplement to erosion prevention for keeping sediment on-site during construction, and never as the single or primary method;
- e) Require project proponent to minimize areas that are cleared and graded to only the portion of the site that is necessary for construction;
- f) Require project proponent to minimize exposure time of disturbed soil areas;
- g) Require project proponent to temporarily stabilize and reseed disturbed soil areas as rapidly as possible;
- h) Require project proponent to permanently revegetate or landscape as early as feasible;
- i) Require project proponent to stabilize all slopes; and
- j) Require project proponents subject to the General Construction Permit to provide evidence of existing permit coverage.

4. Source Identification

Each Permittee shall annually develop and update, prior to the rainy season, an inventory of all construction sites one acre or larger or for smaller construction sites which are a part of a larger development project under within its jurisdiction regardless of site size or ownership. This requirement is applicable to all construction sites specified above regardless of whether the construction site is subject to the General Construction Permit, or other individual NPDES permit. The use of an automated database system, such as Geographical Information System (GIS) is highly recommended, but not required.

5. BMP Implementation

- a) Each Permittee shall designate a set of minimum BMPs that ensure the following at all construction sites (See Comment 18):
 - (1) Erosion prevention;
 - (2) ~~Seasonal restrictions on grading;~~
 - (3) Slope stabilization;
 - (4) Phased grading;
 - (5) Revegetation as early as feasible;
 - (6) Preservation of natural hydrologic features where feasible;
 - (7) Preservation of riparian buffers and corridors where feasible;
 - (8) Maintenance of all source control and treatment control BMPs; and
 - (9) Retention and proper management of sediment and other construction pollutants on site.
- b) Each Permittee shall implement, or require the implementation of, the designated minimum BMPs at each construction site within its jurisdiction year round. If a particular minimum BMP is infeasible at any specific site,

each Permittee shall implement, or require the implementation of, other equivalent BMPs. Each Permittee shall also implement or require any additional site specific BMPs as necessary to comply with this Order, including BMPs which are more stringent than those required under the General Construction Permit.

- c) Each Permittee shall implement, or require the implementation of, BMPs year round; however, BMP implementation requirements can vary based on wet and dry seasons.
- d) Each Permittee shall implement, or require implementation of, additional sediment controls for construction sites tributary to CWA section 303(d) water bodies impaired for sediment as necessary to comply with this Order. Each Permittee shall implement, or require implementation of, additional controls for construction sites within or adjacent to or discharging directly to receiving waters within ESAs as necessary to comply with this Order.

6. Inspection of Construction Sites

- a) Each Permittee shall conduct construction site inspections for compliance with its local ordinances (grading, storm water, etc.), permits (construction, grading, etc.), and this Order.
- b) To establish frequencies for construction oversight activities under this Order, the Permittees shall prioritize its construction site inventory (developed pursuant to G.4 above) by threat to water quality. Each construction site shall be classified as high, medium or low threat to water quality. In evaluating threat to water quality each Permittee shall consider (1) soil erosion potential; (2) site slope; (3) project size and type; (4) sensitivity of receiving water bodies; (5) proximity to receiving waters; (6) non-storm water discharges; (7) compliance history; and (8) any other relevant factors.
- b)c) During the wet season Permittees shall, at a minimum, inspect the following sites every two weeks shall designate the following as as high priority construction sites⁶:
 - (1) All sites 50 acres or more in size and grading will occur during the wet season;
 - (2) All sites 5-1 acres or more, and tributary to a CWA section 303(d) water body impaired for sediment or within or directly adjacent to or discharging directly to a receiving water within an ESA environmentally sensitive area;
 - (3) Other sites determined by the Permittees or the SDRWQCB as a significant threat to water quality. ~~In evaluating threat to water quality, the following factors shall be considered: (1) soil erosion potential; (2) site slope; (3) project size and type; (4) sensitivity of receiving water bodies; (5) proximity to receiving water bodies;~~

⁶ Any site may be inspected on a monthly basis if the responsible Permittee certifies in a written statement to the SDRWQCB ALL of the following (certified statements may be submitted to the SDRWQCB at any time for one or more sites):

- Permittee has record of construction site's WDID number documenting the site's coverage under the General Construction Permit;
- Permittee has reviewed the construction site's SWPPP and finds the SWPPP to be in compliance with all local ordinances, permits, and plans; and
- Permittee finds that the SWPPP is being properly implemented on site.

~~(6) non-storm water discharges; and (7) any other relevant factors.~~

- e)d) ~~During the wet season, the Permittees, at a minimum, shall inspect monthly all construction sites that do not meet the criteria specified in Requirement G.6.b above, but encompass 1-acre or more of soil disturbance. Each Permittee shall establish inspection frequencies and priorities as determined by the threat to water quality prioritization described in G.6.b above. During the wet season, each Permittee shall inspect, at a minimum, each high priority construction site twice each month. Medium priority construction sites shall be inspected at least once each month. Low priority construction sites shall be inspected at least once during the wet season.~~
- e)e) The Permittees shall inspect construction sites less than 1-acre in size on as needed basis.
- e)f) Permittees shall inspect all construction sites as needed during the dry season.
- f)g) Based upon site inspection findings, each Permittee shall implement all follow-up actions necessary to comply with this Order.

7. Enforcement of Construction Sites

Each Permittee shall enforce its ordinances (grading, storm water, etc.) and permits (building, grading, etc.) at all construction sites as necessary to maintain compliance with this Order. Permittee ordinances or other regulatory mechanisms shall include sanctions to ensure compliance. Sanctions shall include the following or their equivalent: stop work authority, non-monetary penalties, fines, financial security, and/or permit denials for non-compliance. If a Permittee determines that lawful prior approval of a project exists, whereby application of ordinance requirements to the project is infeasible, ordinance requirements need not apply to the project.

8. Education Focused on Construction Activities

a) Internal: Municipal Staff

Each Permittee shall implement an education program that includes annual training to ensure that its construction, building, and grading review staff and inspectors have, at a minimum, an understanding of:

- (1) Federal, state, and local water quality laws and regulations applicable to construction and grading activities;
- (2) The connection between construction activities and water quality impacts (i.e., impacts from land development and urbanization);
- (3) How erosion can be prevented and how sediment can be controlled;
- (4) How impacts to receiving water quality resulting from construction activities can be minimized (i.e., through implementation of various source control and treatment control BMPs); and
- (5) How to assess construction sites for adequate BMP implementation and compliance with local codes, ordinances, and permits, and this Order.

- b) External: Project Applicants, Contractors, Developers, Property Owners, and other Responsible Parties

Each Permittee shall implement an education program to ensure that project applicants, contractors, developers, property owners, and other responsible parties have an understanding of the topics outlined above.

H. EXISTING DEVELOPMENT

Each Permittee shall develop and implement programs to prevent or reduce pollutants in runoff to the MEP from all existing development under within its jurisdiction. The Existing Development programs shall address the Sections H.1 through H.3 for municipal facilities and activities, industrial and commercial facilities, and residential activities.

1. Municipal Program

- a) Pollution Prevention

Each Permittee shall require the use of pollution prevention methods by municipal departments, contractors, and personnel, where appropriate.

- b) Source Identification

Each Permittee shall develop, and update annually, an inventory of the name, address (if applicable), and description of all of the Permittee's municipal facilities and activities that generate pollutants. Municipal facilities and activities to be inventoried shall include, but are not limited to, the following:

- Roads, streets, highways, and parking facilities;
- Flood management projects and flood control devices;
- Drainage facilities;
- Active or closed municipal landfills;
- Publicly owned treatment works (including water and wastewater treatment plants) and sanitary sewage collection systems;
- Incinerators;
- Solid waste transfer facilities;
- Land application sites;
- Uncontrolled sanitary landfills;
- Corporate yards including maintenance and storage yards for materials, waste, equipment and vehicles;
- Sites for disposing and treating sewage sludge;
- Hazardous waste treatment, disposal, and recovery facilities;
- Household hazardous waste collection facilities;
- Municipal airfields;
- Parks and recreational facilities;
- Golf courses;
- Cemeteries;
- Botanical and zoological gardens and exhibits;
- Other landscaped areas;
- Channel maintenance activities involving mowing and pesticide/herbicide application;
- Municipal Facilities and activities tributary to a CWA section 303(d) impaired water body, where an area or activity generates pollutants for which the water body is impaired. Facilities and activities within or adjacent to or discharging directly to receiving waters within ESAs; and
- Other municipal facilities and activities that the Permittee determines may contribute a significant pollutant load to the MS4.

- c) BMP Implementation

- (1) Within 365 -from the date of this Order, each Permittee shall implement or require the implementation of BMPs to reduce pollutants in urban runoff to the MEP from all of the Permittee's municipal facilities and activities. The required BMPs shall be facility or activity specific as appropriate. (See Permit Text Comment No. 10)
- (2) For facilities and/or activities tributary to CWA section 303(d) impaired water bodies that generate pollutants for which the water body is impaired, each Permittee shall implement or require the implementation of additional BMPs to target that pollutant. Each Permittee shall implement, or require implementation of, additional controls for the Permittee's municipal facilities and activities within or directly adjacent to or discharging directly to receiving waters within ESAs as necessary to comply with this Order.

d) MS4 Maintenance

- (1) Each Permittee shall implement a schedule of maintenance activities for its structural source and treatment control BMPs designed to reduce pollutant discharges to or from its MS4s and related drainage structures.
- (2) Each Permittee shall implement a schedule of maintenance activities for it's the MS4. (See Permit Text Comment No. 11). The maintenance activities must, at a minimum, include:
 - (a) Inspection of all of the Permittee's catch basins and storm drain inlets at least once a year between May 1 and September 30. If accumulated waste is visible, the catch basin, or storm drain inlet, shall be cleaned out. Additional cleaning shall be conducted as necessary;
 - (b) Removal of anthropogenic litter from the Permittee's open channels at least once a year between May 1 and September 30, with additional removal as necessary;
 - (c) Record keeping of the Permittee's MS4 cleaning activities;
 - (d) Proper disposal of waste removed from the Permittee's MS4 pursuant to applicable laws; and
 - (e) Measures to eliminate waste discharges during MS4 maintenance and cleaning activities.

e) Management of Pesticides, Herbicides, and Fertilizers

The Permittees shall implement BMPs to reduce the contribution of pollutants associated with the application, storage, and disposal of pesticides, herbicides and fertilizers from municipal facilities and activities to MS4s. Such BMPs shall include, at a minimum: (1) educational activities, permits, certifications and other measures for municipal applicators and distributors; (2) integrated pest management measures that rely on non-chemical solutions where feasible; (3) the use of native vegetation where feasible; (4) schedules for irrigation and chemical application; and (5) the collection and proper disposal of unused pesticides, herbicides, and fertilizers.

f) Inspection of Municipal Facilities and Activities

At a minimum, each Permittee shall inspect all of its municipal facilities and activities annually. Inspections shall include an assessment of BMP implementation and effectiveness. Based upon site inspection findings, each Permittee shall implement all follow-up actions necessary to comply with this Order.

g) Enforcement of Municipal Facilities and Activities

Each Permittee shall require compliance with the requirements of enforce its storm water ordinance at for all of its municipal facilities and activities as necessary to maintain compliance with this Order.

e/h) Permittee-Owned Construction Projects/Activities

(1) This Order regulates the discharge of storm water run-off from construction projects, regardless of size, that are under ownership and/or direct responsibility of any of the Permittees. The Permittees shall prevent and control discharges of contaminated runoff from such construction sites through the implementation of BMPs to the MEP for construction projects that disturb less than one acre and to the BAT/BCT for projects one acre or larger.

(2) Prior to the commencement of Permittee-owned construction activities, the Permittees shall notify the SDRWQCB Executive Officer of proposed construction projects that disturb more than one acre of land. Upon completion of the project, the SDRWQCB Executive Officer shall be notified of the completion of the project.

(3) For Permittee-owned projects that will disturb more than one (1) acre (or less than one acre, but part of a larger common plan of sale or development), the Permittees shall develop and implement a storm water pollution prevention plan (SWPPP) and a monitoring program that is specific for the construction project prior to the commencement of any of the construction activities. The SWPPP and monitoring program shall be implemented throughout the duration of the construction project. The SWPPP shall be kept at the construction site and released to the public and/or SDRWQCB staff upon request.

(4) The SWPPP and the monitoring program for the Permittee-owned construction projects shall be consistent with the requirements of the State's General Permit for Storm Water Discharges Associated with Construction Activities (State Board Order No. 99-08-DWQ).

(5) The Permittees shall give advance notice to the SDRWQCB Executive Officer of any planned changes in the Permittee-owned construction activities which may result in non-compliance with this Order. In the event conditions at a Permittee-owned project site constitute non-compliance with this Order, the Permittees shall: 1) notify the SDRWQCB Executive Officer within 3 days of the non-compliance; 2) take all reasonable steps to minimize or correct any adverse impact on the environment

resulting from non-compliance with this Order; and 3) shall, within 30 days of notification, report the following to the SDRWQCB Executive Officer:

- (a) a description of the events that lead to the non-compliance;
- (b) a description of the actions taken by the responsible Permittee to minimize or correct any adverse impacts on the environment resulting from the non-compliance;
- (c) an assessment of the adverse impacts on the environment resulting from the non-compliance
- (6) All other terms and conditions of State Board Order No. 99-08-DWQ shall be applicable.

2. **Industrial/Commercial Facilities Program**

a) Pollution Prevention

Each Permittee shall require the use of pollution prevention methods by industrial/commercial facilities, where appropriate.

b) Source Identification

Each Permittee shall develop an inventory or database of all industrial and commercial facilities under within its jurisdiction (regardless of site ownership) that could contribute a significant pollutant load to the MS4. The inventory shall be based, at minimum, on those facilities currently inspected by Environmental Health as part of the Compliance Assistance Program. At a minimum, the following facilities shall be included. Additional facilities to be required or considered include:

- (1) The following Commercial Facilities and activities shall be considered for inclusion to the extent that they are under the jurisdiction of the Permittees:

- Automobile mechanical repair, maintenance, fueling, or cleaning;
- Airplane mechanical repair, maintenance, fueling, or cleaning;
- Boat mechanical repair, maintenance, fueling, or cleaning;
- Equipment repair, maintenance, fueling, or cleaning;
- Automobile and other vehicle body repair or painting;
- Mobile automobile or other vehicle washing (base of operations);
- Automobile (or other vehicle) parking lots and storage facilities;
- Retail or wholesale fueling;
- Pest control services (base of operations);
- Eating or drinking establishments;
- Mobile carpet, drape or furniture cleaning (base of operations);
- Concrete cement mowing or cutting (facility or base of operations);
- Masonry (base of operations);
- Painting and coating (facility or base of operations);
- Botanical or zoological gardens and exhibits;
- Landscaping (base of operations);
- Nurseries and greenhouses;
- Golf courses, parks and other recreational areas/facilities;
- Cemeteries;
- Pool and fountain cleaning (base of operations);

- Port-a-Potty servicing (base of operations);
- (2) At minimum, the following Industrial Facilities, at minimum, shall be included to the extent they are under the jurisdiction of the Permittees:
 - Industrial facilities, as defined at 40 CFR 122.26(b)(14), including those subject to the General Industrial Permit;
 - Operating and closed municipal landfills;
 - Facilities subject to SARA Title III;
 - Hazardous waste treatment, disposal, storage and recovery facilities;
- (3) All other facilities tributary to a CWA section 303(d) impaired water body, where a facility generates pollutants for which the water body is impaired shall be included; and
- (4) All other facilities that the Permittee determines may contribute a significant pollutant load to the MS4 shall be included.

The inventory shall include the following minimum information for each facility: name; address; a narrative description that best reflects the principal products or services provided by each facility, and the SIC code for industrial facilities.

Each Permittee shall maintain an up-to-date inventory of those industrial facilities addressed by this program. New information obtained during inspections or through other intra-agency informational sources (e.g. business licenses, pretreatment permits, sanitary sewer hook-up permits, yellow pages, etc.) shall be used to update the inventory on a regular basis.

c) BMP Implementation

- (1) Within 365 days from the date of this Order, each Permittee shall designate a set of minimum BMP requirements for all industrial/commercial facilities to reduce the discharge of pollutants in runoff to the MEP. Designated BMPs may be specific to facility types or to pollutant-generating activities conducted at the facilities.
- (2) For facilities and/or activities tributary to CWA section 303(d) impaired water bodies that generate pollutants for which the water body is impaired, each Permittee shall designate additional BMPs to target that pollutant. Each Permittee shall implement, or require implementation of, additional controls for industrial/commercial facilities and activities within or directly adjacent to or discharging directly to receiving waters within ESAs as necessary to comply with this Order.
- (3) Within 365 days from the date of this Order, each Permittee shall notify all inventoried facilities of their applicable minimum BMP requirements, and a description of the local codes or ordinances requiring compliance with reducing the discharge of pollutants in runoff to the MEP.
- (4) Each Permittee shall implement, or require the implementation of, the designated minimum BMPs at each inventoried facility within under its jurisdiction. If a particular minimum BMP is infeasible at any specific site, each Permittee shall implement, or require implementation of, other equivalent BMPs. Each Permittee shall also implement or require any additional site specific BMPs as necessary to comply with this Order including

BMPs which are more stringent than those required under the General Industrial Permit.

d) Inspection of Industrial/Commercial Facilities

- (1) To establish priorities for inspections and oversight of industrial/commercial facilities, the Permittees shall prioritize each inventory described in Requirement H.2.b. above by threat to water quality (high, medium, or low). In evaluating threat to water quality, each Permittee shall consider, at a minimum, the following:
 - Type of facility (SIC Code);
 - Materials used at the facility;
 - Wastes generated;
 - Exposure of activities and pollutant discharge potential;
 - History of non-storm water discharges;
 - Size of facility;
 - Proximity to receiving water bodies and sensitivity of receiving water bodies;
 - Whether the industrial site is subject to the General Industrial Permit;
 - Any available source monitoring data; and
 - Any other relevant factors.
- (2) Each Permittee shall inspect and ensure minimum BMP implementation at all inventoried industrial/commercial facilities in accordance with the following schedule:
 - (a) High priority facilities shall be inspected annually;
 - (b) Medium priority facilities shall be inspected biannually (twice during the 5-year term of the permit);
 - (c) Low priority facilities shall be inspected once during the 5-year term of the permit; and
 - (d) Mobile operations shall be inspected as needed.
- (3) Inspections of industrial facilities shall include, but not be limited to:
 - (a) Check for coverage under the General Industrial Permit (NOI and/or WDD No.);
 - (b) Assessment of compliance with local ordinances and permits, including the implementation and maintenance of designated minimum BMPs;
 - (c) Assessment of BMP effectiveness, including a review of any available monitoring data conducted pursuant to the General Industrial Permit; (See Permit Text Comment No. 13).
 - (d) Visual observations for non-storm water discharges, potential illicit connections, and potential discharge of pollutants in storm water run off; and
 - (e) Education and outreach on storm water pollution prevention.
- (4) Inspections of commercial facilities shall include, but not be limited to:

- (a) Assessment of compliance with Permittee local storm water ordinances and permits, including the implementation and maintenance of designated minimum BMPs;
 - (b) Assessment of BMP effectiveness;
 - (c) Visual observations for non-storm water discharges, potential illicit connections, and potential discharge of pollutants in storm water runoff; and
 - (d) Education and outreach on storm water pollution prevention.
- (5) To the extent that the SDRWQCB has conducted an inspection of an industrial facility during a particular year, the requirement for the responsible Permittee to inspect this site during the same year will be satisfied.
- (6) Based upon facility inspection findings, each Permittee shall implement all follow-up actions necessary to comply with this Order.

e) Enforcement of Industrial/Commercial Facilities

Each Permittee shall enforce its storm water ordinance at all industrial/commercial facilities as necessary to maintain compliance with this Order. Permittee ordinances or other regulatory mechanisms shall include sanctions to ensure compliance. Sanctions shall include the following or their equivalent: Non-monetary penalties, fines, bonding requirements, and/or permit denials for non-compliance.

f) Reporting of Industrial Non-Fileers

As part of each Annual Report, each Permittee shall report a list of industrial facilities, including the name, address, and SIC code, that may require coverage under the General Industrial Permit for which an NOI has not been filed.

g) Industrial/Commercial Inspection Training

Each Permittee shall train staff responsible for conducting inspections of industrial/commercial facilities at least once a year. Permittees are encouraged to conduct training programs and provide compliance assistance to industrial/commercial facility owners, operators, and employers.

3. Residential Program

a) Pollution Prevention

Each Permittee shall, through public education, encourage the use of pollution prevention methods by residents, where appropriate.

b) Source Identification

Each Permittee shall identify high priority residential activities. At a minimum, these activities shall include:

- Automobile repair and maintenance;
- Automobile washing;
- Automobile parking;
- Home and garden care activities and product use (pesticides, herbicides, and fertilizers);
- Disposal of household hazardous waste;

- Disposal of pet waste;
- Disposal of green waste; and
- Any other residential source that the Permittee determines may contribute a significant pollutant load to the MS4.

c) BMP Implementation

- (1) Within 365 days from the date of this Order, each Permittee shall designate a set of minimum BMPs ~~requirements~~ for all high priority residential activities to reduce the discharge of pollutants in urban runoff to the MEP. Through the public education program, the Permittees shall encourage the implementation of these BMPs.
- (2) For residential activities tributary to CWA section 303(d) impaired water bodies that generate pollutants for which the waterbody is impaired, each Permittee shall designate additional BMPs to target that pollutant. Each Permittee shall provide public education to encourage the implement, or require implementation of these additional BMPs ~~controls~~ for high priority residential activities within or directly adjacent to or discharging directly to receiving waters within ESAs as necessary to comply with this Order.
- (3) Each Permittee shall provide public education to encourage implement or require implementation of the designated minimum BMPs for the high priority residential activities listed in Requirement H.3.b. above. If a particular minimum BMP is infeasible for any specific site/source, each Permittee shall provide public education to encourage require implementation of other equivalent BMPs. Each Permittee shall also provide public education to encourage implement, or require implementation of, any additional BMPs necessary to comply with this Order.
- (4) Within 365 days from the date of this Order, each Permittee shall provide public education to notify residents of the applicable minimum BMPs requirements, and a description of the local codes or ordinances requiring compliance with recommended to ~~reducing~~ the discharge of pollutants in runoff to the MEP.

d) Enforcement of Residential Areas and Activities

~~Each Permittee shall enforce its storm water ordinance for residential activities as necessary to maintain compliance with this Order.~~

I. **EDUCATION**

Each Permittee shall implement an Education Component using all media as appropriate to (1) measurably increase the knowledge of the target communities regarding MS4s, impacts of urban runoff on receiving waters, and potential BMP solutions for the target audience; and (2) measurably change the behavior of target communities and thereby reduce pollutant releases to MS4s and the environment. At a minimum the education component shall address the following target communities:

1. Municipal Departments and Personnel
2. Construction Site Owners and Developers
3. Industrial Owners and Operators
4. Commercial Owners and Operators
5. Residential Community, General Public, and School Children
6. Quasi-Governmental Agencies/Districts (i.e., educational institutions, water districts, sanitation districts, etc.)

J. ILLICIT DISCHARGE DETECTION AND ELIMINATION

Each Permittee shall implement an Illicit Discharge Detection and Elimination program containing measures to actively seek and eliminate illicit discharges and connections. At a minimum the Illicit Discharge Detection and Elimination program shall address:

1. Illicit Discharges and Connections

Each Permittee shall implement a program to actively seek and eliminate non-allowed flows and illicit discharges and connections into its MS4. The program shall address all types of illicit discharges and connections excluding those non-storm water discharges not prohibited by the Permittee in accordance with Section B of this Order.

2. Develop/Maintain MS4 Map

Each Permittee shall develop or obtain and up-to-date labeled map of its entire MS4 and the corresponding drainage areas within its jurisdiction. The use of a GIS is highly recommended. The accuracy of the MS4 map shall be confirmed and updated at least annually.

3. Dry Weather Monitoring

Each Permittee shall select and inspect reconnaissance stations within its jurisdiction, conduct dry weather inspections, field screening, visual observation, and analytical monitoring shall be conducted in accordance with the Monitoring and Reporting Program of the MS4 within its jurisdiction to detect illicit discharges and connections in accordance with the Monitoring and Reporting Program.

4. Investigation / Inspection and Follow-Up

Each Permittee shall investigate and inspect any portion of the MS4 that, based on visual observations, monitoring results, or other appropriate information, indicates a reasonable potential for illicit discharges, illicit connections, or other sources of non-storm water (including non-prohibited discharge(s) identified in Section B of this Order). Each Permittee shall develop numeric criteria in accordance with Section II.A.5.3) establish follow-up procedures and develop numeric criteria in accordance with section II.B.2.d. of the Monitoring and Reporting Program to determine when follow-up actions will be necessary occur. Numeric criteria and follow-up procedures shall be described in each Permittees' Individual SWMP.

5. Elimination of Illicit Discharges and Connections

Each Permittee shall eliminate all illicit discharges, illicit discharge sources, and illicit connections as soon as possible after detection. Elimination measures may include an escalating series of enforcement actions for those illicit discharges that are not a serious threat to public health or the environment. Illicit discharges that are a serious threat to public health or the environment must be eliminated immediately.

6. Enforce Ordinances

Each Permittee shall implement and enforce its ordinances, orders, or other legal authority to prevent illicit discharges and connections to its MS4. Each Permittee shall also implement and enforce its ordinance, orders, or other legal authority to eliminate detected illicit discharges and connections to its MS4.

7. Sewage Spill Prevention and Response

Each Permittee shall take appropriate actions to prevent, respond to, contain and clean up sewage spills (including private laterals and failing septic systems) into the MS4 and to prevent the contamination of surface water, ground water and soil to the MEP. Appropriate actions may include the following (See Permit Text Comment No. 14):

- Develop and implement a mechanism to be notified of all sewage spills from private laterals and failing septic systems into the MS4;
- Coordinate sewage spill prevention, containment and response activities throughout all appropriate departments, programs and agencies to ensure maximum water quality protection at all times;
- Require adequately sized and properly maintained private property sewerage systems, such as at residential and commercial complexes;
- Require proper connections of private laterals to the public sewer main;
- Require adequately-sized, and properly maintained grease control devices at food establishments which otherwise could result in sewer line grease blockages;
- Conduct municipal activities such as street repair or tree plantings in a manner that minimizes sewer line damages or root blockages;
- Identify priority areas, produce maps and other information on systems obtained during development review;
- Educate the public on measures to prevent spills; and
- Ensure that private sewage lines are inspected.

8. Facilitate Public Reporting of Illicit Discharges and Connections - Public Hotline

Each Permittee shall promote, publicize and facilitate public reporting of illicit discharges or water quality impacts associated with discharges into or from MS4s. Each Permittee shall facilitate public reporting through development and operation of a public hotline. Public hotlines can be Permittee-specific or shared by Permittees. All storm water hotlines shall be capable of receiving reports in both English and Spanish 24 hours per day / seven days per week. Permittees shall respond to and resolve each reported incident. All reported incidents, and how each was resolved, shall be summarized in each Permittee's Individual Annual Report.

9. Facilitate Disposal of Used Oil and Toxic Materials

Each Permittee shall facilitate the proper management and disposal of used oil, toxic materials, and other household hazardous wastes. Such facilitation shall include educational activities, public information activities, and establishment of collection sites operated by the Permittee or a private entity. Neighborhood collection of household hazardous wastes is encouraged.

K. WATERSHED-BASED ACTIVITIES

1. Each Permittee shall collaborate with other Permittees to identify, address, and mitigate the highest priority water quality issues/pollutants in the Upper Santa Margarita Watershed.
2. Each Permittee shall collaborate with all other Permittees to develop and implement a Watershed SWMP for the Upper Santa Margarita Watershed. The Watershed SWMP shall, at a minimum, contain the following:
 - a) An accurate map of the Upper Santa Margarita Watershed (preferably in GIS format) that identifies all receiving waters, all CWA section 303(d) impaired receiving waters, existing and planned land uses, MS4s, major highways, jurisdictional boundaries, and industrial and commercial facilities, municipal sites, and residential areas.
 - b) A description of any interagency agreement, or other efforts, with non-Permittee owners of the MS4 (such as Caltrans, Native American Tribes, and school districts) to control the contribution of pollutants from one portion of the shared MS4 to another portion of the shared MS4; (See Permit Text Comment No. 15).
 - c) An assessment of the water quality of all receiving waters in the watershed based upon (1) existing water quality data; and (2) results from the receiving waters and dry weather monitoring programs described in Monitoring and Reporting Program No. R9-2004-001;
 - d) An identification and prioritization of major water quality problems in the watershed caused or contributed to by MS4 discharges and the likely source(s) of the problem(s);
 - e) An implementation time schedule of short and long-term recommended activities (individual and collective) needed to address the highest priority water quality problem(s) identified in Requirement K.2.c. above. For this section, "short-term activities" shall mean those activities that are to be completed during the life of this Order and "long-term activities" shall mean those activities that are to be completed beyond the life of this Order;
 - f) A watershed-based education program, which focuses on water quality issues specific to the upper Santa Margarita watershed;
 - g) A mechanism to facilitate collaborative "watershed-based" (i.e., natural resource-based) land use planning with neighboring local governments in the watershed.
 - h) A description of any other urban runoff management programs or activities being conducted collectively by the Permittees to address water quality issues;
 - i) A description of Permittee responsibilities for implementing the programs described in the Watershed SWMP;
 - j) The expenditures and funding sources for the area-wide and watershed-based activities and programs;
 - k) Standardized reporting formats developed collectively by the Permittees, as specified in Requirement M.1;
 - l) Short-term strategy for assessing the effectiveness of the activities and programs implemented as part of the Watershed SWMP. The short-term assessment strategy shall identify methods to assess program effectiveness and include specific direct and indirect performance

measurements that will track the immediate progress and accomplishments of the Watershed SWMP towards improving receiving water quality impacted by urban runoff discharges. The short-term strategy shall also discuss the role of monitoring data collected by the Permittees in substantiating or refining the assessment; and

- m) Long-term strategy for assessing the effectiveness of the Watershed SWMP. The long-term assessment strategy shall identify specific direct and indirect performance measurements that will track the long-term progress of Watershed SWMP towards achieving improvements in receiving water quality impacted by urban runoff discharges. Methods used for assessing effectiveness shall include the following or their equivalent: surveys, pollutant loading estimations, receiving water quality monitoring, and achievement of measurable goals. The long-term strategy shall also discuss the role of monitoring data in substantiating or refining the assessment.
- 3. Permittees shall, as appropriate, participate in watershed management efforts to address storm water quality issues within the entire Santa Margarita Watershed, including efforts conducted by other entities in the watershed, such as San Diego County, U.S. Marine Corps Base Camp Pendleton, Native American tribes, and other state, federal, and local agencies.
- 4. At least once a year, all Permittees shall meet to review and assess all available water quality data (from the Monitoring and Reporting Program and other reliable sources), assess program effectiveness, and to review and update the Watershed SWMP.

L. MONITORING AND REPORTING PROGRAM

Pursuant to CWC section 13267, the Permittees shall comply with all requirements contained in **Monitoring and Reporting Program No. R9-2004-001**.

M. PRINCIPAL PERMITTEE RESPONSIBILITIES

The Principal Permittee shall, at a minimum:

- 1. Coordinate the joint development by all of the Permittees of standardized format(s) for all reports required under this Order (e.g., annual reports, monitoring reports, fiscal analysis reports, and program effectiveness reports, etc.). The standardized reporting format(s) shall be submitted to the SDRWQCB for review as part of the SWMP. The standardized format(s) shall be used by all Permittees and shall include protocols for electronic reporting.
- 2. Integrate individual Permittee documents and reports required under this Order into single unified documents and reports for submittal to the SDRWQCB as described below. If a reporting date falls on a non-working day or State holiday, then the report is to be submitted on the following working day.
 - a) SWMP – The Principal Permittee shall submit the SWMP in its entirety to the SDRWQCB within ~~365~~ 640 days of the adoption of this Order, as required in the Monitoring and Reporting Program. The Principal Permittee shall be responsible for preparing the Watershed SWMP and its Individual SWMP. The Principal Permittee shall also be responsible for collecting and assembling the Individual SWMPs describing the activities and programs to be implemented by each individual Permittee.
 - b) Monitoring and Reporting Program - The Principal Permittee shall submit the SWMP Annual Reports and the Monitoring Annual Reports in

accordance with Monitoring and Reporting Program No. R9-2004-001. The Principal Permittee shall be responsible for producing the Watershed SWMP Annual Report as well as its Individual Annual Report, and for collecting and assembling the Individual SWMP Annual Reports covering the activities conducted by each Permittee. The Principal Permittee shall also be responsible for coordinating the implementation of and reporting on the Receiving Waters Monitoring Program, described in section II of Monitoring and Reporting Program No. R9-2004-001.

- c) Interagency Agreement - The Principal Permittee shall submit a copy of the Interagency Agreement to the SDRWQCB, if and when the agreement is updated.

N. STANDARD PROVISIONS

1. Each Permittee shall comply with the standard provisions contained in **Attachment B** of this Order. This includes 24 hour/5day reporting requirements for any instance of non-compliance with this Order as described in Section 1.1.6 of **Attachment B**.
2. All documents submitted to the SDRWQCB pursuant to this Order, including but not limited to SWMP documents, annual reports, monitoring reports, and SUSMPs, shall include an executive summary, introduction, conclusion, recommendations, and signed certified statement.
3. All plans, reports and subsequent amendments submitted in compliance with this Order shall be implemented immediately (or as otherwise specified) and shall be an enforceable part of this Order upon submission to the SDRWQCB. All submittals by Permittees must be adequate to implement the requirements of this Order.

*I, John H. Robertus, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Diego Region, on **Insert Date**.*

TENTATIVE

John H. Robertus
Executive Officer

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION
TENTATIVE
MONITORING AND REPORTING PROGRAM No. R9-2004-001
NPDES PERMIT No. CAS0108766
FOR THE DISCHARGES OF URBAN RUNOFF FROM THE
MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s)
DRAINING THE COUNTY OF RIVERSIDE, THE CITY OF MURRIETA, THE CITY OF
TEMECULA AND THE RIVERSIDE COUNTY FLOOD CONTROL AND WATER
CONSERVATION DISTRICT WITHIN THE SANTA MARGARITA WATERSHED**

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I. PURPOSE

This Monitoring and Reporting Program is intended to meet the following goals:

1. Assess compliance with Order No. R9-2004-001;
2. Measure and improve the effectiveness of the SWMPs;
3. Assess the chemical, physical, and biological impacts of receiving waters resulting from urban runoff;
4. Characterize urban runoff discharges, including long-term trends in receiving water quality;
5. Identify sources of specific pollutants;
6. Prioritize drainage and sub-drainage areas that need management actions;
7. Detect and eliminate illicit discharges and illicit connections to the MS4;
8. Support overall water quality assessments of the Santa Margarita Region; and
9. Assess the overall health of receiving waters.

II. MONITORING PROGRAM

The Monitoring Program consists of dry weather monitoring, receiving waters trend monitoring, receiving waters sentinel monitoring, regional monitoring, special studies, and monitoring provisions. All monitoring program components identified herein shall be implemented no later than October 2004, unless otherwise specified herein.

The Permittees shall develop a monitoring program that meets or exceeds the requirements of this section within 365 days of adoption of Order No. R9-2004-001. Each Permittee may include procedures specific to its jurisdiction. Each Permittees' monitoring program shall be described in the Individual SWMP.

A. Dry Weather Monitoring

Dry Weather Monitoring consists of: 1) Identifying and prioritizing outfalls and receiving waters to be regularly visited for evidence of discharges; 2) Determining the sources of discharges into the MS4; 3) Eliminating illicit discharges; and 4) Collecting field and/or analytical water quality samples and documenting observations.

1. Dry Weather Monitoring Station Selection

Each Permittee shall select dry weather monitoring stations within its jurisdiction. The number of stations shall be sufficient to represent the MS4 and detect changes that may indicate the presence of illicit discharges in the system. Stations shall be located at accessible points in the MS4 (e.g., outfalls, manholes or open channels) and downstream of potential sources of illicit discharges (i.e., commercial, industrial, and residential areas). Station selection may also be determined based on complaints, history of previous illicit discharges, or observations of flows outside of regularly-scheduled dry weather monitoring. Permittees shall use the MS4 map, developed pursuant to section J.2 of tentative Order No. R9-2004-001, to help locate reconnaissance monitoring stations and to determine the number necessary to adequately represent the entire MS4. Each identified station shall be inspected at least twice between May 1st and September 30th of each year, and more frequently if the Permittee determines necessary to comply with section J of tentative Order No. R9-2004-001.

2. Determining sources of unknown discharges

If the source of an observed discharge is unknown, every effort shall be made to determine its source. If the discharge originates in another Permittee's jurisdiction, telephone notification with a Permittee representative shall be made immediately.

3. Eliminating illicit discharges

If the discharge is determined to be an illicit discharge, actions to eliminate the discharge shall begin immediately. Written procedures shall be developed by the Permittees and submitted to the SDRWQCB for approval within 365 days of permit adoption.

4. Dry Weather Monitoring Methods

The first priority of this program is to eliminate illicit discharges. Monitoring is used to characterize the source of a discharge that cannot be determined, or as evidence in an enforcement action (e.g., the responsible party will not cease discharge). Written procedures shall be developed by the Permittees and submitted to the SDRWQCB for approval within 365 days of permit adoption. Until the written policy is approved, the following procedure shall be followed:

- a) ~~[This may be better moved to section E – Provisions as this information should be collected with each sample]~~At each inspected site, Permittees shall record general information such as time since last rain, quantity of last rain, site descriptions (e.g., conveyance type, dominant land uses in drainage area), flow estimation (e.g., width of water surface, approximate depth of water, approximate flow velocity, flow rate), and visual observations (e.g., odor, color, clarity, floatables, deposits/stains, oil sheen, surface scum, vegetation condition, structural condition, and biology). A photo of the station should also be taken.
- b) No further action will be taken for allowed discharges, pursuant to Permit Provision B.2., unless a future inspection or complaint action indicates otherwise. If a trickle flow or ponded water is encountered during inspection, and there is no direct connection between the flow or ponded water and a receiving water, sample collection is not required, and a followup visit will be made within 72 hours. Investigation of the trickle flow or ponded water will be made if it still exists in the followup visit. If the source of ponded water is found to be from an upstream discharge, the flowing portion of the discharge may be sampled according to the provisions of this section.
- c) Field screening shall take place when the source of a discharge cannot be determined or as part of a complaint response or enforcement action. At a minimum, the following field screening measurements shall be conducted:
 - (1) Specific conductance (or calculate estimated Total Dissolved Solids);
 - (2) Turbidity;
 - (3) pH;
 - (4) Temperature; and
 - (5) Dissolved Oxygen;

- d) If field screening indicates potential water quality impairment (e.g., very high specific conductance, TDS or turbidity, very high or low pH, depressed dissolved oxygen levels), and/or observations in the area of the discharge indicate a potential illicit discharge (e.g., staining, water sheen, water color and/or odor, algae, foaming), a sample shall be collected for laboratory analysis. The decision of what parameters to analyze shall be based on the visual and olfactory observations, the types of nearby businesses or land uses, and history of complaints in the area. Until written procedures are approved, samples shall be analyzed at a laboratory for the following constituents:
- (1) Total hardness;
 - (2) Oil and grease;
 - (3) Cadmium (dissolved);
 - (4) Copper (dissolved);
 - (5) Lead (dissolved);
 - (6) Diazinon and Chlorpyrifos (only if found to exceed Basin Plan Objectives during the first storm watershed sentinel station screen);
 - (7) Nitrate Nitrogen;
 - (8) Ammonia Nitrogen;
 - (9) Enterococcus;
 - (10) Total coliform; and
 - (11) Fecal coliform.
- e) As part of the dry weather monitoring program, the Permittees shall develop numeric criteria for field screening and analytical monitoring results that will trigger follow-up investigations to identify the source causing the exceedence of the criteria. In the event of an exceedence of the criteria, Permittees shall implement the follow-up investigation procedures developed pursuant to section J.4 of tentative Order No. R9-2004-001.

B. Receiving Water Trend Monitoring

Receiving water trend monitoring, as the next line of defense, tracks short-term changes and long-term trends in chemistry and flow at major tributaries. By tracking these changes, the Permittees can identify the presence of potential illicit discharges into the tributary and prioritize MS4s discharging to the tributary for increased scrutiny.

1. Monitoring station location

The Permittees shall monitor the constituents in Table 1 from the following four locations, or their equivalent:

- a) Santa Gertrudis Creek, just upstream of the confluence with Murrieta Creek;
 - b) Warm Springs Creek, just upstream of the confluence with Murrieta Creek;
 - c) Long Canyon Creek, just upstream of the confluence with Murrieta Creek;
 - d) Redhawk Channel, just upstream of the confluence with Temecula Creek; and
 - e) A reference station to be selected by the Permittees. The reference station shall be representative of natural, undeveloped conditions within the upper Santa Margarita Watershed. This station may coincide with the Watershed Sentinel Monitoring reference station.
2. Samples for dry weather monitoring shall be collected quarterly. During the wet weather season, at least 72 hours after the previous storm shall have passed before a sample is collected.
 3. The constituents listed in Table 1 below shall be monitored:

Table 1. Receiving Water Trend Monitoring List of Constituents	
Trace Metals	Pesticides (only if found to exceed Basin Plan Objectives during the first storm sentinel station screen)
Cadmium	Diazinon
Chromium	Chlorpyrifos
Copper	
Nickel	Conventionals
Lead	Temperature
Zinc	pH
Nutrients	Hardness
Ammonia (NH ₃)	Specific conductance
Nitrate (NO ₃)	Dissolved oxygen
Total phosphorus	Total Suspended Solids
Bacteria	
Total coliform	
Fecal coliform	
Enterococcus	

4. All monitoring results shall be compared to applicable water quality standards from the Basin Plan. All exceedences shall be highlighted in the Annual Monitoring Report.

C. Receiving Water Sentinel (Triad) Monitoring

The purpose of receiving water sentinel monitoring is to track changes in watershed health and to confirm whether the URMP is working. A reference station is established in the same watershed to ensure that changes are tracked in proper context.

Sentinel monitoring consists of: 1) Mass Loading (Chemical) monitoring, 2) Water Column Toxicity Monitoring; and 3) Bioassessment. A triad approach decision matrix is utilized to determine when further action, such as a TIE, is necessary.

1. Mass Loading

The Permittees shall monitor mass loadings of pollutants associated with urban runoff from major drainage areas under the jurisdiction of the Permittees in the Upper Santa Margarita Watershed to accomplish the following objectives:

- Estimate the mass loading of the pollutants from the Permittees' MS4s;
- Assess trends in the mass loadings of the pollutants from the Permittees' MS4s over time;
- Determine if discharges from the Permittees' MS4s are contributing to exceedences of any applicable Basin Plan water quality objectives; and
- Demonstrate whether implementation of the URMP is resulting in improvements to watershed health.

a. Mass Loading Station Location

- 1) The Permittees shall monitor mass loadings from the following locations, or their equivalent. Alternate locations, located within the same drainage area, may be selected.

Lower Temecula Creek (existing station #777);

Lower Murrieta Creek @ USGS Weir (existing station #778); and

A reference station to be selected by the Permittees. The reference station shall be representative of natural, undeveloped conditions within the permit area. This reference station may coincide with the Watershed Trend Monitoring reference station

- 2) The Permittees shall monitor the first storm event of each monitoring year that produces sufficient flow to collect a composite sample, and a minimum of 1 additional storm event during each monitoring year at each mass loading station. A monitoring year is from July 1 through June 30.
- 3) Every effort shall be made to sample two storm events during each monitoring year. In the event that two storm events are not sampled during one monitoring year at any given station, the Permittees shall submit, with the subsequent Annual Report, a written explanation for lack of sampling data, including qualitative precipitation forecast (QPF), doppler radar, or similar data from the National Weather Service, and streamflow data from the nearest USGS gauging station. In the event that more than two sampleable storms occur in a year, and a preceding year did not produce two sampleable storms, an additional storm sample should be collected.
- 4) In addition to the storm events, the Permittees shall collect quarterly dry weather samples from each mass loading station per

sampling year. Two of the dry weather samples shall coincide with the bioassessment and toxicity sampling events to the extent practicable. If flow is insufficient to collect a sample, this shall be documented in the subsequent annual report.

- 5) Sampling at all stations shall begin no later than October 31, 2004.

b. Mass Loading Sampling and Analysis Protocol

- 1) Mass loading sampling and analysis protocols shall be consistent with 40CFR122.21(g)(7)(ii) and with EPA Storm Water Sampling Guidance (EPA 833-B-92-001). Samples for mass loading monitoring shall be flow-weighted composites, collected during the first 3 hours of flow, or for the duration of the storm if it is less than three hours. A minimum of 3 sample aliquots, separated by a minimum of 15 minutes, shall be taken within each hour of discharge¹, unless the SDRWQCB Executive Officer approves an alternate protocol. Automatic samplers are recommended, but manual samples may be collected from mass loading stations where it is not feasible to install an automatic sampler. Grab samples shall be taken for pathogen indicators and oil and grease.
- 2) For the first storm of every sampling year, mass loading stations shall be analyzed for the full EPA priority pollutant list (40 CFR 122, Appendix D). For the remaining sampling events, analysis may be reduced to the constituents listed in Table 2, below, unless data from the first storm indicate the need for the full list, or portions thereof.

Table 2. Mass Loading Short List of Constituents	
Trace Metals	Pesticides
Cadmium	Diazinon
Chromium	Chlorpyrifos
Copper	Other OP pesticides (only if found to exceed Basin Plan Objectives during the first storm sentinel station screen)
Nickel	
Lead	Conventionals
Zinc	Temperature
Nutrients	pH
Ammonia (NH ₃)	Hardness
Nitrate (NO ₃)	Specific conductance
Total phosphorus	Dissolved oxygen
	Total Suspended Solids
Bacteria	
Total coliform	Volatiles (dry only)
Fecal coliform	
Enterococcus	PAHs

¹ Required in 40 CFR 122.21(g)(7)(ii), and described in NPDES Storm Water Sampling Guidance Document EPA 833-B-92-001. Time-weighted samples may be appropriate if flow is measured during sampling.

- 3) All mass loading results shall be compared to applicable Basin Plan water quality criteria. All exceedences shall be highlighted in the Annual Monitoring Report, and shall be used to determine follow-up analyses described in section C.4.

2. Water Column Toxicity Monitoring

The Permittees shall conduct toxicity monitoring to evaluate the extent and causes of toxicity in receiving waters.

- a. The Permittees shall analyze samples from two storm events (including the first storm of each year) and two dry weather events from each mass loading station for toxicity every year. Dry weather sampling should coincide, to the extent practicable, with the dates the bioassessment samples are collected. At a minimum, the Permittees shall conduct 48-hour non-renewal/96-hour static renewal tests with an invertebrate, *Ceriodaphnia dubia* (water flea) and a vertebrate, *Pimephales promelas* (fathead minnow) for each storm event. Alternative species that are sensitive to metals and pesticides and are appropriate for acute toxicity testing may be used instead of those specified. Toxicity testing shall be conducted in accordance with approved EPA methods contained in Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms, Fifth Edition, EPA/821-R-02-012, October 2002, or subsequent editions.
- b. The presence of acute toxicity shall be determined as specified in Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms, Fifth Edition, EPA/821-R-02-012, October 2002, or subsequent editions. Acute toxicity is significantly reduced survival of standard test organisms in a receiving water sample compared to the survival of control organisms using statistical procedures (LC50) in a 48-hour non-renewal/96-hour static renewal test.

3. Bioassessment

The Permittees shall conduct bioassessment monitoring to evaluate the biological integrity of receiving waters, to detect biological responses to pollution, and to identify probable causes of impairment not detected by chemical and toxicity monitoring. The program required in this section replaces the program currently being conducted by the Permittees under CWC Section 13225 Directive for Assessing Water Quality Impacts of Urban Runoff in the Santa Margarita Watershed, issued by the SDRWQCB on March 6, 2003.

At a minimum, the Permittees shall implement a program that consists of sampling, monitoring, and analysis of data for the watershed sentinel stations (including 1 reference station) in order to determine the biological and physical integrity of urban streams within the Upper Santa Margarita Watershed. The selection, sampling, monitoring, and analysis of bioassessment stations shall meet the following requirements:

- a. Each bioassessment station shall, to the extent feasible:

1. Be located within the jurisdiction of a Permittee;
 2. Meet the physical criteria of the California Department of Fish and Game's California Stream Bioassessment Procedure (CSBP)²;
 3. Be located within ½ mile upstream or downstream of a mass loading station; and
 4. Coincide with the location of a monitoring station previously used by the California Department of Fish and Game for the SDRWQCB's Ambient Bioassessment Program.
- b. Each bioassessment station shall be monitored twice annually, in May and October of each year. A minimum of three replicate samples shall be collected at each station during each sampling event.
- c. Sampling, laboratory, quality assurance, and analysis procedures shall follow the standardized procedures set forth in the CSBP. Analysis procedures shall include comparison between station mean values for various biological metrics and the Preliminary San Diego Index of Biotic Integrity (IBI)³, or any subsequently developed applicable IBI. Sampling, laboratory, quality assurance, and analytical procedures shall follow the standardized "Non-Point Source Bioassessment Sampling Procedures" for professional bioassessment set forth in the CSBP. In the event that the CSBP "Point-Source Professional Bioassessment Procedure" is performed in place of the "Non Point Source Bioassessment Sampling Procedure," justification and documentation of the procedure shall be submitted with the Annual monitoring report.
- d. Results of the bioassessment monitoring shall be reported annually. The Annual monitoring report shall include:
- 1) All physical, chemical and biological data collected in the assessment;
 - 2) Photographic documentation of assessment and reference stations;
 - 3) Documentation of quality assurance and control procedures;
 - 4) Analysis that includes calculation of the metrics used by both the CSBP and the San Diego IBI;
 - 5) The report shall provide interpretation for comparisons of mean biological and habitat assessment metric values between assessment and reference stations;
 - 6) Electronic data formatted to California Department of Fish and Game Aquatic Bioassessment Laboratory specifications for inclusion in the Statewide Access Bioassessment database; and
 - 7) Copies of all QA/QC documents from laboratories.
- e. A professional environmental laboratory shall perform all sampling, laboratory, quality assurance, and analytical procedures. Permittee staff trained in CSBP methods may collect samples, but data collected by volunteer monitoring organizations, while valuable, shall not be

²California Stream Bioassessment Procedure (Protocol Brief for Biological and Physical/Habitat Assessment in Wadeable Streams), California Department of Fish and Game – Aquatic Bioassessment Laboratory, May 1999.

³This document can be downloaded from <http://www.swrcb.ca.gov/rwqcb9/programs/bioassessment.html>

submitted in place of professional assessments.

- f. Permittees shall evaluate the reference station annually for suitability and include the results in the annual report. New reference stations will be selected as needed by the Permittees.

4. Follow-up Analysis and Actions Based on Triad Approach

When results from the chemistry, toxicity, and bioassessment monitoring described above indicate urban runoff-induced degradation, Permittees shall evaluate the extent and causes of urban runoff pollution in receiving waters and prioritize management actions to eliminate or reduce sources under their jurisdiction. Toxicity Identification Evaluations (TIEs) or equivalent methods (e.g., the source of toxicity is evident based on chemistry analyses, surrounding land uses, history of complaints in the area, etc.) shall be used to determine the cause of toxicity, and to identify potential sources and implement management actions to reduce pollutants in urban runoff causing toxicity. Permittees shall use the guidance outlined in Table 3 below⁴ to determine what followup should be taken.

Table 3. Triad Approach to Determining Follow-Up Actions				
	Chemistry	Toxicity	Bioassessment	Recommended Action
1.	No persistent exceedences of water quality objectives	No persistent evidence of toxicity	No indications of benthic alteration	No action necessary
2.	No persistent exceedences of water quality objectives	No persistent evidence of toxicity	Indications of benthic alteration ⁵	No action necessary due to toxic chemicals
3.	No persistent exceedences of water quality objectives	Persistent evidence of toxicity	No indications of benthic alteration	Verify toxicity test results Conduct TIE ⁶ to ID contaminants of concern if evidence of toxicity is persistent. Based on TIE results, assess possible urban runoff sources of toxicity.
4.	No persistent exceedences of water quality objectives	Persistent evidence of toxicity	Indications of benthic alteration	Verify toxicity test results Conduct TIE to ID contaminants of concern if evidence of toxicity is persistent. Based on TIE results, assess possible urban runoff sources of toxicity.
5.	Persistent exceedence of water quality objectives	No persistent evidence of toxicity	No indications of benthic alteration	Assess possible upstream urban runoff sources causing exceedences

⁴ County of San Diego

⁵ Indications of alteration of benthic macroinvertebrates and/or stream habitat shall be determined by the data analysis and comparison to the San Diego IBI and CBSP required in section C.3.c.

⁶ A TIE will not be required during the first year of the permitting period.

provide a regional assessment of the impact of discharges of runoff from urban development under their jurisdiction to the watershed. The Permittees are encouraged to submit proposed modifications to the Monitoring and Reporting Program that will facilitate the development of the regional watershed monitoring program.

E. Special Studies

Special studies are intended to address specific research or management issues that are not addressed by the monitoring program described in Provision II. of the Monitoring and Reporting Program. The Permittees may propose a special study, or be directed to perform a special study by the Executive Officer. The Executive Officer may allow the Permittees to participate in statewide, national, or other monitoring programs in lieu of all or portions of this Urban Runoff Monitoring Program.

F. Monitoring Provisions

All monitoring activities shall meet the following requirements:

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity [40 CFR 122.41(j)(1)].
2. The Permittees shall retain records of all monitoring information, including all calibration and maintenance of monitoring instrumentation, copies of all reports required by this Order, and records of all data used to complete the Report of Waste Discharge and application for this Order, for a period of at least five (5) years from the date of the sample, measurement, report, or application. This period may be extended by request of the SDRWQCB or EPA at any time and shall be extended during the course of any unresolved litigation regarding this discharge [40 CFR 122.41(j)(2), CWC section 13383(a)].
3. Records of monitoring information shall include [40 CFR 122.41(j)(3)]:
 - a. The date, exact place, and time of sampling or measurements;
 - b. The individual(s) who performed the sampling or measurements;
 - c. The date(s) analyses were performed;
 - d. The individual(s) who performed the analyses;
 - e. The analytical techniques or methods used; and,
 - f. The results of such analyses.
4. All sampling, sample preservation, and analyses must be conducted according to test procedures approved under 40 CFR part 136, unless other test procedures have been specified in this Monitoring and Reporting Program or approved by the Executive Officer [40 CFR 122.41(j)(4)].
5. The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Order shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than two years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than four years, or both [40 CFR 122.41(j)(5)].

6. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this Monitoring and Reporting Program [40 CFR 122.41(l)(4)(iii)].
7. All chemical, bacteriological, and toxicity analyses shall be conducted at a laboratory certified for such analyses by the California Department of Health Services or a laboratory approved by the Executive Officer.
8. For priority toxic pollutants that are identified in the CTR (65 *Fed. Reg.* 31682), the Permittees shall instruct its laboratories to establish calibration standards that are equivalent to or lower than the Minimum Levels (MLs) published in Appendix 4 of the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP). If a Permittee can demonstrate that a particular ML is not attainable, in accordance with procedures set forth in 40 CFR 136, the lowest quantifiable concentration of the lowest calibration standard analyzed by a specific analytical procedure (assuming that all the method specified sample weights, volumes, and processing steps have been followed) may be used instead of the ML listed in Appendix 4 of the SIP. The Permittee must submit documentation from the laboratory to the SDRWQCB for approval prior to raising the ML for any priority toxic pollutant.
9. The SDRWQCB Executive Officer or the SDRWQCB may make revisions to this Monitoring and Reporting Program at any time during the term of Order No R9-2004-001, and may include a reduction or increase in the number of parameters to be monitored, locations monitored, the frequency of monitoring, or the number and size of samples collected.

III. REPORTING PROGRAM

A. SWMP Reporting Requirements

The Principal Permittee shall submit a SWMP Annual Report to the SDRWQCB no later than October 31 annually. The reporting period for these annual reports shall be the previous fiscal year. For example, the report submitted on or before October 31, 2005 shall cover the reporting period July 1, 2004 to June 30, 2005. The SWMP Annual Report shall contain the Watershed Annual Report, and the four Individual Annual Reports.

1. **Individual Annual Report** - Each Individual Annual Report shall be a documentation of the activities conducted by each Permittee during the previous annual reporting period. Each Permittee shall submit their Individual Annual Report to the Principal Permittee by a date determined by the Principal Permittee for inclusion in the SWMP Annual Report. Each Individual Annual Report shall, at a minimum, contain the following:
 - a. Comprehensive description of all activities conducted by the Permittee to meet all requirements of Tentative Order No. R9-2004-001, including, but not limited to, the following information:
 - 1) Development Planning (Section F):
 - (i) Description of any amendments to the General Plan or the development project approval process;

- (ii) Number of grading permits issued;
 - (iii) Number of developments conditioned to meet SUSMP requirements*;
 - (iv) Attach one example of a development project that was conditioned to meet SUSMP requirements and a description of the required BMPs;
 - (v) Description of any updates to the environmental review process;
 - (vi) Description and number of training efforts conducted during the reporting period (for staff, developers, contractors, etc.), including the number of staff trained; and
 - (vii) An assessment of program effectiveness based on the measurable goals established in the Permittee's Individual SWMP.*
- 2) Construction (Section G):
- (i) Number of inspections conducted;
 - (ii) Number and type of enforcement actions related to construction sites;
 - (iii) Description of modifications made to the construction and grading approval process;
 - (iv) Description and number of training efforts conducted during the reporting period (for staff inspectors, contractors, and construction site operators); and
 - (v) An assessment of program effectiveness based on the measurable goals established in the Permittee's Individual SWMP.*
- 3) Municipal (Section H.1):
- (i) Number of municipal inspections conducted;
 - (ii) Number and types of enforcement actions taken;
 - (iii) Number of catch basins and inlets that were inspected and the number that were cleaned;
 - (iv) Assessment of the amount and type of debris removed from catch basins, streets, and open channels, including an identification of problem areas that generate the most pollutants;
 - (v) Assessment of effectiveness of BMPs that have been implemented for municipal facilities and activities;
 - (vi) Description and number of training efforts conducted over the last year (for municipal facility operators and/or inspectors); and
 - (vii) An assessment of program effectiveness based on the measurable goals established in each Permittee's Individual SWMP.*
- 4) Industrial/Commercial (Section H.2):
- (i) Number of inspections conducted;
 - (ii) Number and type of enforcement actions taken; and
 - (iii) An assessment of overall program effectiveness based on the measurable goals established in the Permittee's Individual SWMP.*

* Items with an asterisk are not applicable to the first annual report.

- 5) Residential (Section H.3):
 - (i) A description of residential areas that were focused on during the past year;
 - (ii) Number and types of enforcement actions taken; and
 - (iii) Assessment of overall program effectiveness based on the measurable goals established in the Permittee's Individual SWMP.*
 - 6) Education (Section I):
 - (i) Description of education efforts conducted by the Permittee (not collectively with other Permittees) during the previous year;
 - (ii) Assessment of overall program effectiveness based on the measurable goals established in the Permittee's Individual SWMP.*
 - 7) Illicit Discharge Detection and Elimination (Section J):
 - (i) Number of illicit discharges, connections and spills reported and/or identified during the reporting period;
 - (ii) Number of illicit discharges or connections investigated during the reporting period and the outcome of the investigations;
 - (iii) Number and types of enforcement actions taken for illicit discharges or connections during the reporting period;
 - (iv) Number of times your agency's hotline was called during the reporting period, as compared to previous reporting periods;
 - (v) Number and location of dry weather monitoring sites that were monitored during the reporting period;
 - (vi) Summary of dry weather monitoring program results, including: 1) All inspection, field screening, and analytical monitoring results; 2) All follow-up and elimination activities; and 3) Any proposed changes to station locations and/or sampling frequencies; and
 - (vii) An assessment of overall program effectiveness based on the measurable goals established in the Permittee's Individual SWMP.*
 - 8) Public Participation - a description of efforts to include the public in urban runoff management programs during the reporting period (i.e., river clean-ups, volunteer monitoring, Permittee council meetings related to the SWMP, etc.).
- b. Assessment of Program Effectiveness - each Permittee shall include an assessment of the effectiveness of its Individual SWMP using the measurable goals and direct and indirect assessment measurements developed in the SWMP, in accordance with Attachment D.
 - c. Fiscal Analysis Component - each Permittee shall include an annual fiscal analysis, for each fiscal year covered by tentative Order No. R9-2004-001, in its Individual Annual Report. This analysis shall evaluate the expenditures (such as capital, operation and maintenance, education, and administrative expenditures) necessary to accomplish the

activities of the Permittee's Individual SWMP. The analysis shall include the following:

- 1) A report of the previous reporting period's budget, and a budget for the upcoming reporting period. To the extent possible, the budgets should be broken down by the following programs:
 - (i) Program management;
 - (ii) Construction Inspections;
 - (iii) Development plan review/SUSMP implementation;
 - (iv) Industrial/Commercial inspections;
 - (v) Illicit discharge and connection response and elimination;
 - (vi) Municipal activities (catch basin cleaning, BMP maintenance, etc.);
 - (vii) Education;
 - (viii) Monitoring; and
 - (ix) Other
 - 2) A description of the source(s) of funds that were utilized during the previous fiscal year and the source(s) of funds proposed to meet the necessary expenditures for the subsequent year, including legal restrictions on the use of such funds.
- d. Non-Storm Water Discharges – Permittees shall report on any discharge category listed in Requirement B.2 of tentative Order No. R9-2004-001 that was identified as a source of pollutants during the reporting period. For each identified category, the Permittee shall report whether it elected to prohibit the discharge or to require BMPs to reduce pollutants in the discharge to the MEP. If the discharge is not prohibited, the BMPs that will be implemented, or required to be implemented, shall be described in each Permittee's Individual SWMP Annual Report.
 - e. Receiving Water Limitations – the report required pursuant to Requirement C.2.a. of tentative Order No. R9-2004-001, if applicable.
 - f. A summary of all urban runoff related data not included in the annual monitoring report (e.g., special investigations); and
 - g. Proposed revisions to the Individual SWMP, including areas in need of improvement based on the assessment of effectiveness of each program component.
2. **Watershed Annual Report** – The Watershed Annual Report, to be produced by the Principal Permittee shall describe the area-wide and watershed-based programs and activities (as described in the Watershed SWMP) conducted during the previous reporting period. At a minimum, the Watershed Annual Report shall contain the following information:
 - a. A description of all area-wide and watershed-based activities conducted during the reporting period;
 - b. A description of efforts to coordinate with other stakeholders in the Santa Margarita Watershed, such as San Diego County and the U.S. Marine Corps Base Camp Pendleton;

- c. An assessment of water quality in the Santa Margarita watershed area of Riverside County, this assessment shall include data from the previous monitoring report;
- d. Identification of water quality improvement or degradation;
- e. A prioritization of water quality problems and potential sources;
- f. A description of watershed-specific educational activities conducted during the reporting period;
- g. Recommended activities to be conducted jointly by the Permittees to address the identified water quality problems;
- h. An assessment of overall program effectiveness based on the measurable goals established in the Watershed SWMP; and
- i. Proposed revisions to the Watershed SWMP.

B. Monitoring Reporting Requirements

1. **Monitoring Program Annual Report** – The Principal Permittee shall submit the Monitoring Program Annual Report (Monitoring Report) to the SDRWQCB on or before October 31 of each year. The Monitoring Report shall contain tabular and graphical summaries as well as discussions and interpretations of the receiving water monitoring data obtained during the previous monitoring year. At a minimum, each Monitoring Report shall include the following:
 - a. Data, results, methods of evaluating the data, graphical summaries of the data, and an explanation/discussion of the data for each Monitoring Program component listed above. Results of toxicity tests shall be reported in Toxic Units (TUs).
 - b. An analysis of the findings of each receiving waters monitoring program component.
 - c. If applicable, a report on the development, implementation, and results of any and all TRES
 - d. Identification and analysis of any long-term trends in storm water or receiving water quality.
 - e. An estimation of total pollutant loads attributed to urban runoff for each mass loading station.
 - f. The Monitoring Report shall specify the analytical method used and the method detection limits (MDLs) for each pollutant. Analytical data shall be reported with one of the following methods, as appropriate:
 - 1) An actual numerical value for sample results greater than or equal to the MDL;
 - 2) "Not-detected (ND)" for sample results less than the laboratory's MDL; or

- 3) "Detected, but Not Quantified (DNQ)" if results are greater than or equal to the laboratory's MDL but less than the ML. The estimated chemical concentration of the sample shall also be reported. This is the concentration that results from the confirmed detection of the substance by the analytical method below the ML value.
- g. A comparison to all applicable water quality objectives and an assessment of compliance for each component of the Monitoring Program. The lowest applicable water quality objective shall be used for comparison. Constituents that exceed applicable water quality objectives shall be highlighted. Follow-up actions conducted pursuant to requirements in this Monitoring and Reporting Program and pursuant to section C of Order No. R9-2004-001 (Receiving Water Limitations) shall be described.
- h. A description of all monitoring stations, including the following:
 - 1) Station location by latitude and longitude coordinates;
 - 2) A description of the drainage area and the main land uses;
 - 3) Frequency of sampling;
 - 4) Sampling protocols; and
 - 5) Quality assurance/quality control procedures.
- i. If the Permittees monitor any pollutant more frequently than required by this Monitoring and Reporting Program using test procedures approved under 40 CFR part 136, unless otherwise specified in the Order, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Monitoring Reports [40 CFR 122.41(l)(4)(ii)].
- j. All Monitoring Reports shall be submitted in both electronic and paper formats.

C. Certified Perjury Statement

All reports submitted to the SDRWQCB shall include the following signed, certified perjury statement:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.